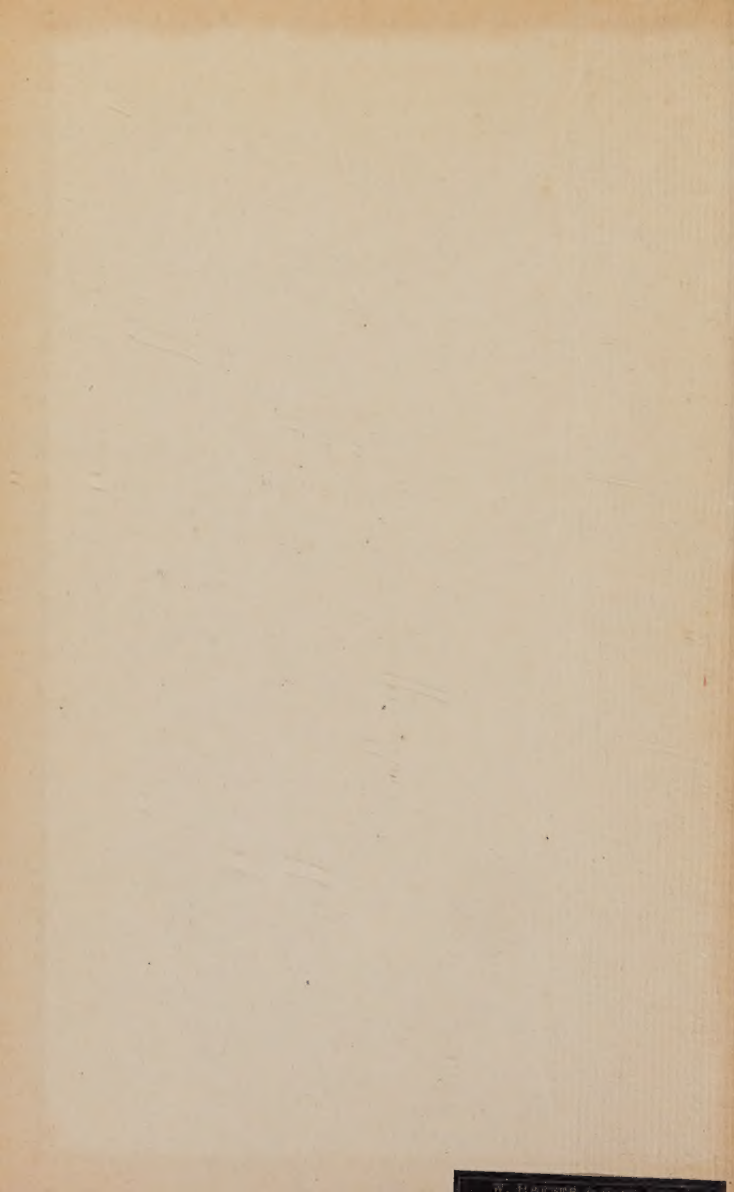






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# THE DRAMA OF THE LAW

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# CHAPTER ONE

## INTRODUCTORY

TO observe an analogy between the drama and the law does not seek to exalt the art or to degrade the science. It is merely a recognition that drama and law are complementary to each other and that common humanity is refreshed by the thought and satisfied that it should be so.

A history of drama would be a history of civilised society. As far as we can learn nearly all the peoples of the earth have loved drama and expressed themselves dramatically. I am not certain that the ancient Egyptians were playgoers, and of course there are the Puritans, but apart from mummies and Nonconformists humanity is nothing if not dramatic. A world without drama would be of no use to humanity, and whether we approve of it or no the fact remains that in all popular art, religion and law there is a strong element of drama. Drama, as the Victorian journalist used to say of his wares, "meets a felt want" in human nature.

It is probably for this reason that from the earliest dawn of civilisation we find that justice has seen fit to cast her manifestations in a dramatic form. Even to-day when we think of a trial or a lawsuit we picture it to ourselves in terms of drama, applauding the hero or heroine, execrating the villain of the piece, chuckling at the comedian in the witness-box and

expressing approval of the modest demeanour of the small-part man who walks on to the dim bench and gives the necessary cues to the great actors in the limelight. And as we read the report of a law case we recall the familiar scenery of a court house, the traditional costumes of the characters and that dramatic setting which we inwardly approve of as essential to the administration of justice.

All the earliest lessons in practical justice are taught in dramatic form. They are veritable dramas of the law. Every child rejoices in nursery days—at least I know that I did—to listen to that simple legal drama, with its thrilling Grand Guignol moment and admirable happy ending, so excellently staged for the groundlings by the author of the *Book of Kings*. Attention and imagination are captured as the curtain rises on the splendid scene of the *Porch of Judgment*, featuring King Solomon on the throne of justice surrounded by the learned pundits of the law and guarded by the javelin men who preceded him when he went circuit. But it is a drama, not a spectacle, we are to enjoy. Noises are heard “off,” and enter to Solomon two ladies of the *Doll Tearsheet* persuasion, but with sufficient human nature left in their composition to yearn for the ownership of a baby child. We see at once that we are in the presence of an action at law or legal drama.

The procedure of this simple suit seems much the same as any you will see in an urban county court or police court of to-day. The first woman or plaintiff states her case with shrill volubility and much circumstance. In representation no doubt the scriptural dialogue would have to be extended and suitably adorned with expletives, but the intimate story of the birth of the two children, the death of

one, and the alleged larceny of the surviving infant by the bereft mother, is told in sufficient detail. The second woman or defendant pleads the general issue and denies everything with sullen emphasis.

Then Solomon sums up thus : " The one saith, This is my son that liveth, and thy son is the dead : and the other saith, Nay ; but thy son is the dead, and my son is the living." This modern method of repeating the evidence over again in summing up without any effort to lighten the darkness of the problem contained in it is here shown to be of great judicial antiquity. It is also very sound in dramatic construction. It tells the audience over again what they have just listened to, and this is essential in drama to enforce attention to the theme of a play. The mere dullness of the repeated words is masterly, for it leads up to the thrill of the drama when Solomon rises and calls out, " Bring me a sword ! "

Solomon,

" His stature all majestic, all divine,

Straight as the palm tree, strong as is the pine,"

brandishing his sword and holding up the squalling infant by one leg, is just about to cleave it in two when a piercing shriek from the real mother stays his hand, and he listens with poised blade to her heart-rending plea that she will accept a non-suit if he will " in no wise slay it."

A more careful reading of the text in later years shows me that I was probably a victim of youthful imagination as to the actual " picture " at the fall of the curtain. Neither Scripture nor Oriental legend supports my vision of the ending of the trial. It seems clear that Solomon, like any modern judge, merely directed his Registrar to divide the estate and give a moiety to each litigant after the court fees were duly paid.



The last act of the drama is certainly ingenious and human. The real mother preferring to lose her child rather than lose its life ; the King showing his wisdom in reading the riddle ; and the world-renowned tag brings down the curtain with universal applause : " Give her the living child, and in no wise slay it : she is the mother thereof."

It is clear that in this legend we have a very early and remarkable drama of the law, the fame of which still lingers in the world's memory. If we accept the statements of the court historians of the day the effect of the verdict at the time was very striking. All Israel heard of the judgment the King had judged, they liked the sporting character of it and it gained Solomon a world-wide reputation as one who had the wisdom to do judgment. In fairness to our own judges, many of whom are probably at least as good as Solomon, we should remember that under the modern rules and procedure of our courts any such judgment to-day would be reversed in the Court of Appeal on the ground that the alleged mother's last statement was not evidence. To-day we have to conduct the dramas of the law in closer fetters and these Grand Guignol effects are frowned upon in the highest judicial circles. But the story is a striking example of the dramatic form of a legal action and is evidence how great truths are often best advertised to the world through the medium of drama.

An old writer on acting says : " All dramatic fictions please us the more like they are to real adventures and occurrences." This gives the clue to the intense interest that is taken by the general public in a celebrated trial. I cannot agree that this popular desire to read about trials is of a morbid character or that the interest taken in trials is un-

healthy and merely a seeking after unwholesome sensations. On the contrary I think it is natural and sensible. Trials are human documents and contain in their dossiers truths about humanity expressed in a simple form of drama that makes them easily understood of the people.

No doubt when you read a trial, as when you read a novel or a play, you are apt to portray yourself as the hero and follow him even into the dock with personal sympathy. All drama I fancy to some extent reacts or reenacts itself in the audience if it is good drama. That is one of the best qualities of it. Magistrates and schoolmasters seem to think that if a boy reads *Jack Sheppard* he wants to be Jack Sheppard, but that is not at all the truth of it. Whilst he reads no doubt he is Jack Sheppard, just as he has been Jack in the Beanstalk in earlier years, and just as every little girl is Cinderella, and just as every grown-up in his day has been Hamlet. But this spiritual enjoyment of drama does not naturally result in a child or a man making a bodily fool of himself afterwards.

No doubt there are exceptional weak, sensual and feeble-minded persons who should not be allowed to read either truth or fiction. But to normal men and women the study of human nature in recorded trials ought to be a valuable and stimulating exercise.

I remember no book in my father's library that gave me in my school days, in those hours I should have devoted to home lessons, more of the joy of life than George Borrow's excellent collection of celebrated trials. The *Newgate Calendar*, though bloodier and to that extent more satisfying and sensational, did not tell the stories so dramatically. Pitaval and the *Causes Célèbres* in later years I found

too diffuse, but John Hill Burton's *Scots Criminal Trials* are delightful reading, and H. B. Irving wrote with much insight and charm of modern criminals. Although I myself prefer actual records and really enjoy Howell's *State Trials* better than any story made up from that storehouse of social life and history, yet few of us have the time for these things, and books like Borrow's, Pitaval's, Burton's and Irving's are worthily entertaining to the desultory reader.

Because I happened on a library rich in both drama and trials in my early youth I am not urging that all children should be brought up on the *Newgate Calendar*. But I do not believe that the perusal of even that hoary collection of horrors would do any sane boy much harm. I am convinced that both young and old, when they read accounts of criminal trials, approach them with pity and sympathy for the wrongdoers much in the spirit of that good Puritan divine who, when he saw the Tyburn carts making their way westward, murmured in penitence, "But for the grace of God there goes John Bradford!"

It is this strong human interest in crime and trials and lawsuit, that has attracted so many writers of plays and novels to portray these scenes. But to succeed in this endeavour is no easy task. The real facts of these matters are well understood by the populace. Nearly everyone has some first-hand knowledge of trials and law courts, and spectators are unduly critical and alert to expose errors and omissions of ceremony and detail in the mimic scene of a trial upon the stage.

When, however, a really great dramatist puts on the stage a successful story of crime or litigation the audience accept it with greedy appetite and welcome

it with the greater enthusiasm because it is so familiar in its appeal.

Probably the best and most successful drama of crime that the world has taken to its heart is the play which we call *Punch and Judy*. It is a strange truth that this ancient story of crime and execution still remains and is likely to remain a joy for ever to all honest and simple men and women and children. There may exist superior persons who outwardly condemn this candid entertainment and turn up their eyes at the immoral glorification of this callous but successful hero. Yet even these unhappy ones you may on occasion discern at the edge of the crowd on the pitch behind the National Portrait Gallery tortured inwardly by a contest between shame and delight. No nature it seems can really abhor this great drama. The squeak of Punch is a call to humanity.

But one must honestly admit that *Punch and Judy* is a drama of crime of the most hideous and blood-thirsty character. Even Charles Lamb has not attempted to whitewash its black wickedness. Yet with what a chuckle we note our favourite hurl his tender infant from the window, thrash his wife to death with his truncheon, and slay in sequence the negro, the clown, and especially the policeman.

One of the causes of Punch's popularity is perhaps the success he has in evading the myrmidons of the law. Not only does he kill the policeman, but he out-Herods Herod by hanging the hangman by means of a trick, the subtlety of which should not have overpowered a hangman of reasonable astuteness.

Having "done in" the law and the powers that be on earth, he next tackles the Devil himself and finally disposes of that unpleasant personality. By

this feat alone he earned in the religious days of my Victorian childhood my eternal gratitude, and I felt that Providence would forgive Punch the lighter trespasses of his earlier career in recognition of his last splendid service to humanity.

The call that a great criminal like Punch has upon the interest and even the affection of mankind is universal. The Napoleon touch, the boldness, the success of a great criminal make an irresistible appeal to our instinct of hero worship. We keep the lives of the saints upon our shelves, but we burn the midnight oil studying the biographies of sinners. Perhaps it is the very enormity of Punch's crimes as well as his continued and genial success that endears the villain to our hearts.

From Shakespeare to Lewis Carroll we find that nearly every great English author attempts to portray a trial. It would be an interesting critical study to analyse these literary efforts and point out why some writers fail to bring the dusty atmosphere of the court and the scent of its humanity over the footlights. But let us at least offer thanks for the great successes that genius has achieved, since these do much to explain for us what mankind seeks and desires in dramas of the law.

The two greatest trial scenes in our literature are probably to be found in the *Merchant of Venice* and *Pickwick*. Shakespeare deals with his court scene in the most businesslike way, and when the play is well staged—as it was in Irving's day at the Lyceum—from the moment the Duke comes in and takes his seat you feel as though you were at a real trial at the Old Bailey or the Manchester Assizes.

One of the finest Shakespearian portraits in my memory is Henry Howe in the character of the Duke. I had seen him play Antonio, and he was a good



merchant, yet the character is a poor one dramatically, and legally it is contemptible—for what can be more insignificant than a judgment debtor who has run his head into bankruptcy by signing a deed without the advice of his solicitor? You cannot make a hero of such a one. But when Howe took his seat and bowed to the bar, and then left and right to his super-colleagues who silently graced the red bench of the Venetian quarter sessions, one knew that this was a real court of law.

Shakespeare and Howe between them gave you a real judge, dignified and businesslike, calling on the case at once and then putting himself right in a few well-chosen words with the anti-Jew party that leaned picturesquely over the barriers and hooted Shylock until the tipstaff called "silence." You noted with pleasure that the Duke was a judge after the Chancellor's heart, who knew that "patience and gravity of hearing is an essential part of justice, and an overspeaking judge is no well-tuned cymbal." At one moment he puts your heart in your mouth and you think the whole trial may suddenly collapse when he tries to settle the case and asks Shylock: "How shalt thou hope for mercy, rendering none?" Had Shylock jumped at this idea and taken the opportunity to withdraw a juror there would have been no trial. It is really a moment of great excitement in the drama, but the audience breathe freely when they hear Shylock, a typical obstinate plaintiff, decide to go on with the case, sure of victory and determined to ask for costs on the higher scale.

Howe's reception of the eminent "special" from the Padua bar was a model of judicial courtesy. There are some who have blamed Shakespeare for allowing his advocate to talk bad law and permitting his judge to receive it and act upon it. To my mind

this is a real touch of nature. It shows the dramatist at the height of his skill in the construction of human drama. For consider the position. Here we have a judge of first instance; the court itself I take to be some kind of Quarter Sessions Court and very likely the Duke is the unpaid Chairman. Had the counsel been a member of the local bar he would have advised the court that Shylock was in the right. But down comes this brilliant young "special" from Padua backed with a letter from old Bellario—the *bâtonnier* of the Italian Bar—putting forward this point of law on their joint authority. What, I ask you, could the Duke do but listen to it all with grave outward respect? Howe did this to perfection, nodding with grave acquiescence at Portia's worst points, as I have seen a magistrate do when Charles Russell was addressing him. As a drama of the law the whole business is real nature. And if Shylock to-day were a plaintiff in person in any of our own courts of County or Quarter Sessions, with a "special" up against him, I should expect some such procedure and result as Shakespeare portrays.

But whatever we may think of the scene, certainly no actor ever played the judge with more correct accent and gesture than Howe. From the very first you knew that whether he was a great lawyer or not he was a good judge, and you felt sure that he would not waste time, but would finish the case by the luncheon hour and invite the young "special" to feed with him and rejoice over the discomfiture of the wicked defendant. All this is fulfilled and it is absurd to cavil at the kind of law administered by the Duke. For a judge of first instance, overborne by a fashionable "special" from Padua, he gets through very creditably and without spoiling the evening's drama or the lovers' happy ending.

As for Shylock we can always remember that in real life there is a Court of Appeal.

Dickens' trial scene is indeed not only a drama but "a full report of the memorable trial of Bardell against Pickwick." He has given us a pre-Raphaelite painting of a law court, each touch of colour—the piecrust hue of the law calf, the blue and crimson bags—being as accurate as is his description of the scenery of the court. All the characters in the drama are drawn with wonderful comedy and even the juryman who is given a small speaking part helps us to realise the picture.

But every scene in the trial reads as though you were sitting in some real court in dreamland where all the most characteristic incidents in a real trial are brought rapidly and clearly before your eyes in a few moments. How wonderfully true the whole scene is! The splendid eloquence of Buzfuz, the moral indignation of poor Pickwick, the narrow absurdity of Mr. Justice Stareleigh, the adorable irrelevance of Mrs. Cluppins, the degradation of Mr. Winkle and the triumph of Sam Weller—are they not all real living pictures? One can never tire of feasting on the pages of this drama of the law. It is the very household bread of English literature.

Ruskin, in the days of depression when he had a bad cold and wrote to one of the dear ladies of the Thwaite for sympathy and for "the dimmest sort of diabolical pleasure I have in thinking how miserable I shall make Susie by telling her all this," says that he has been trying to amuse himself for three days and "I tried to read *Pickwick* but found that vulgar, and, besides, I know it all by heart." I have always thought that he uses "vulgar" here in a Pickwickian sense, or rather in the original sense in which it is used in the phrase, "our vulgar tongue." Ruskin

could never have been familiar with and taken to his heart a book that was vulgar in an evil sense. This trial scene of Bardell and Pickwick has the sublime vulgarity of the drama of *Punch and Judy*. It appeals to the comic spirit of the common man, and that is doubtless the reason why it will never pass into nothingness but will remain a joy for ever to English-speaking races.

Both these examples of dramatised litigation might very easily be printed in the form of law reports, and with the genius, poetry and comedy eliminated become very humdrum trials. For trials and dramas have many essentials in common. Trials are the raw material of drama, as Robert Browning and many other writers of books have discovered.

It is essential for instance to a trial and a drama that each must have a plot, and this plot has to be illustrated and developed not so much by words as by the action of the characters. Drama should place action first and words in a subsidiary position, a truth too little understood by dramatists, who have always shrunk from sacrificing the offspring of the pen to the action of the play. In a trial words have a worthier part in the proceedings, but the gestures and demeanour of judge, advocate and witnesses are all art and part of the legal drama.

Advocates are popular favourites, regarded by the public with much the same affection that they extend to prize-fighters, jockeys, and actors. From time immemorial advocates have trained themselves to give histrionic displays in the legal dramas in which they were engaged. The bar and the stage have always been kindred professions. Cicero studied the action of Æsopus and Roscius, the theatrical stars of his day, and many advocates of modern generations have attempted the gestures,

pauses and accents of contemporary actors with varying results. Latter-day fashion is against a too theatrical display, and the modern advocate eschews the histrionics of the old actor, even at the Old Bailey, and seeks at *nisi prius* to attain the supreme unconcern of what may be called the Du Maurier touch.

The art of acting, then, is as necessary to a trial as it is to a drama. Judges, advocates, witnesses, prisoners, ushers and onlookers are all merely players in a legal drama; they have their entrances, their moments of theatrical supremacy, and to the man in the dock his manner of departure is as momentous an affair as the exit of the most self-centred actor on the boards.

Even the dialogue of a trial, which we call evidence, is not so much a matter of improvisation as the world believes. A dramatic attorney, though he does not of course write parts for his witnesses, rehearses them carefully in their proofs to see that they are letter perfect, and like Hamlet strongly urges them to "speak no more than is set down for them." Furthermore, the proud author of a brief will try to write a part for the advocate, but that star artist often rejects the written manuscript, and goes on and gags on his own, a liberty not at all unknown in the modern theatre and a proceeding that often brings about good box-office results on the stage as well as in court.

Perhaps one of the most obvious links of sympathy between the theatre and the law court is their love and use of pantomime, with which both of them achieve some of their most notable effects.

Pantomime, by which we mean a performance wherein the actors express themselves in gestures,

has always had a strong hold on popular audiences. The spoken word may be unintelligible, but appropriate movement speaks a universal language easily understood of the people. Both the Church and the law have borrowed much of their procedure from the pantomimists.

For these geniuses were our earliest actors. The Chinese and Persians and other Oriental races flocked to the pantomimes of their day, the Roman theatres played the "*saltatio pantomimorum*" to capacity. So popular was pantomime that Augustus was flattered to accept the authorship of this delightful form of entertainment. Mæcenas financed these shows and maybe added to his wealth thereby. Bathyllus, not the Pythagorean philosopher but Mæcenas' comic star and right-hand man, and his pupils, Pylades and Hylas, were pantomimists as honoured by the Roman aristocracy as Arthur Roberts, Dan Leno and George Robey have been beloved by the golden youth of their own generation.

In the more educated middle ages pantomime gave place to the literary drama. And now once again in the second childhood of the world we hark back again to a degraded form of pantomime, and the toothless and tasteless at each extremity of the gamut of life sit in the cinemas sucking lollipops and gaping at human shadows in exaggerated pantomime expressing crude emotions in eccentric yet orthodox gestures. So we find, as our old world rolls on, centuries of achievement discarded and a weary generation finding even human pantomime too exhausting for the intellect and seeking entertainment in the second-hand sensations of a shadow pantomime.

But pantomime of some kind the world insists



upon, and early lawyers would indeed have been negligent had they not adapted pantomime procedure to legal dramas. Thus when land is conveyed Coke tells us that "it behoveth to have livery of seisin," and he gives us in wealth of detail the stage directions of this interesting drama. "The solemnity that the law requireth for the passing of land" may be done, as we should say in theatrical parlance, by pure pantomime or by pantomime with dialogue. Thus you the feoffor may go on the land and take "the ring of the doore or turfe or twigge of the land and deliver the same upon the land to the feoffee in name of seisin of the land," or you may both hold the deed of conveyance and you the feoffor may add congratulatory expressions as you hand the feoffee the haspe or twigge or turfe such as : "Enter into this house or land and God give you joy," a pretty phrase with which to ring down the curtain upon the drama of a conveyance of lands.

There are many varieties of these pantomimes in our kingdom and some are still extant. In the old days, for conveying mills a clap and hopper were the correct properties to use ; for fishing, a net and coble ; for tithes, a sheaf of corn. But though most of these ceremonies are obsolete, yet once a year, when the sheriffs of London and Middlesex are presented to the Lord Chief Justice, the crier still "makes an oyez" and the senior alderman produces six horseshoes and sixty-one nails and counts them out to satisfy the Remembrancer that they are good number, and so the City still does suit and service to the Crown, as tenants and occupiers of "The Forge" in the parish of St. Clement Danes. And in the same way there is still some drama left when we execute a deed of conveyance and we go through a modified pantomime which Gilbert accurately

describes in verse in *The Sorcerer*, and Sullivan has set to appropriate music.

“*Recit.*—Counsel.

All is prepared for sealing and for signing,  
The contract has been drafted as agreed,  
Approach the table, oh ye lovers pining,  
With hand and seal come execute the deed!

*Chorus.*

See they sign without a quiver, it  
Then to seal proceed.  
They deliver it—they deliver it  
As their act and deed.

Alexis. I deliver it—I deliver it  
As my act and deed.

Aline. I deliver it—I deliver it  
As my act and deed.”

In the office of a musical attorney it would add to the “solemnitie” if this use were always adopted.

And we find that the law as well as the drama makes constant use of certain “properties,” as they are called on the stage, with which to express certain ideas. What a great “property” both on the stage and in the courts is a common hat, capellus, bonnet or other head-covering. Tradition says that Richard I in captivity handed his bonnet (pilleus) to the Emperor Henry VI, and thereby symbolically invested his enemy with his kingdom of England. This was “talking through your hat” with a vengeance! But caps have always had important legal significance. There was the red cap of liberty which was placed on the head of the Roman slave on the liberation morning, the cap and bells of the jester rendering him immune from the penalties for slander, and the statute cap which the English peasant wore on his holidays. These were all “property” caps or caps that were instilled with certain legal properties.

The cap is still a tragic symbol in use in the law when the judge assumes the black cap after the verdict of the jury and sends the prisoner to his doom. This cap is merely part of the judge's full dress and the judges used to wear the cap on November 9th, when the Lord Mayor is presented, and on other State occasions. The use of the black cap on sentence of death may have a Jewish origin, when covering the head would be a sign of mourning.

And what is true of caps is even more obviously the truth about such properties as maces, swords and staves, without which insignia the majesty of the law could never have expressed itself clearly to an illiterate people. The mace, which is a lineal descendant of the club with which the first strong cave man battered his adversaries and then administered home-made law to them, is still carried before our own Lord Chancellor to show that his legal powers are similar to those of his prehistoric ancestor. And in recent history the white staff has at the end of a State trial often been broken by the High Steward before the eyes of modern generations to show to the world that his Commission is at an end.

And leaving the property room for the wardrobe we find that in law as in drama the costume of the actors is of first importance, since the position of the player in the hierarchy of the piece is often stamped on the mind of the audience by the make-up and costume of the performer. Professor Teufelsdröckh made manifest to us a great truth when he asked: "Has not your red hanging-individual a horse-hair wig, squirrel skins and a plush gown: whereby all mortals know that he is a Judge?" The erminous splendour of our judges may not add a cubit to the stature of their learning, but it adds

a flavour to their discourse and is a substantial asset to the dignity of the law which enhances the cause of justice in the minds of mankind.

In the same way it is convenient that the small-part men, the barristers, registrars and ushers, should have some distinctive dress that may notify their degree and authority to the eye. Even a solicitor, if he casts himself for a speaking part in some suburban fit-up of a county court, does well to adorn himself with a distinctive gown lest he be mistaken for a judgment debtor and be in danger of committal.

And the great traditions of costume hold the stage in their grip as firmly as they hold the law. For if you read the history of Harlequin you will find that the evolution of his motley is as certainly traceable to the dawn of dramatic art as many details of a judge's robes are referable to the early days of the law when chancellors were princes of the Church. The basic idea of both professions being to use dress as an outward and visible sign of the position of the particular person in the drama that is passing, and to let the audience know at the sight of a character whether the actor is meant to be judge or clown, registrar or pantaloon, advocate or harlequin.

Scenery, too, is as important to a legal drama as it is to a theatrical play. The set is common form. It can be made up from the store, using the familiar "oak chamber" as the base of the affair and concluding the business with a few packing-cases draped in red cloth. In some such fit-up I have myself sat in remote county courts. If the scene be a law court there must always be a bench for the judge to sit upon where he is raised above his fellows, there must be a box for a jury, another box for the witness and a pen for the lawyers. These things

are of the essence of the matter, arrange them as uncomfortably as you may.

In the old days if you liked to deal with your drama from its earliest commencement you might have a scene within St. Paul's where the Serjeants met their clients at their allotted pillars at the parvis or outer courtyard of the church.

Chaucer tells us of

"A Serjeant of the law, ware and wise,  
That often hadde ben at the parvis."

There they stood for hire for many a long year. Later you might see them pacing the cloisters in the Temple, which are still with us, and up to our own time the lawyers congregated in Westminster Hall, as I have seen them myself, engaged in consultation with their clients. All these places have been scenes in the first act of many a remarkable drama of the law. But in modern drama we have no Rialto and are driven back to the "oak chamber" again, and furnishing it this time with a dummy bookcase and a desk with some tin boxes and briefs and a telephone we start our play in a solicitor's consulting room or a barrister's chambers.

And though costume and scenery are art and part of a legal drama yet I cannot say that we lawyers have ever made much use of music. Like the Théâtre Français we have no orchestra, though we do not open our play with a dull thud behind the scenes, but make use of a herald of sorts to "make an oyez" and announce the coming of the judges. On some circuits they still retain the trumpeters. I remember a witty musicianer on the Northern Circuit who trolled out "Home, Sweet Home" as the judge rose for the long vacation and even ventured on "We're a' noddin'" when their lordships returned

to court after the luncheon interval. I have known a clerk of assize who intoned the oath and arraigned the prisoners in recitative, but like the ancient serious drama we have never treated music as a necessary ingredient of our practice nor have we garnished our dramas with irrelevant tunes.

It is greatly to be regretted that we have lost much excellent drama in our legal proceedings and replaced it by a verbose and less intelligible procedure. What could have been better in the old days than the wager of battle? How sane it would be if the County Court Rules Committee adopted the rubric of the *Second Part of King Henry VI* and then we could enjoy the sight of Horner *v.* Peter each with staff and sandbag thrashing the matter out in the good old way. Horner and Peter of to-day "barging" at each other with their tongues make no better job of it than they did with sandbags, and are far less edifying to the onlookers.

I have endeavoured to show that there is a real analogy between trials and dramas because in reading reports of cases I have always found myself from my earliest days making dramas of these stories for myself. There is generally some outstanding character in the *dramatis personæ* of a trial, not necessarily a party to the suit, round whom the story of the piece seems to revolve. These essays make no claim to be law reports or legal chronicles, but are merely human stories of recorded trials. It was in the reading of the original authorities that they seemed to group themselves under the description of Dramas of the Law, but they are, as far as their form permits, records of fact.



## CHAPTER TWO

### CONCERNING TRAGEDIES

- I. LADY ALICE LISLE. 2. WILLIAM TERRISS. 3. DR. KENEALY. 4. THE SANDYFORD MYSTERY

THERE are countless tragedies recorded in the law reports, but one does not find among the *dramatis personæ* of the legal drama many great outstanding tragic figures akin to Lear or Macbeth. The tragedy in which a man is throughout at issue with fate is not completely played out in the law courts, though the last act is often staged in the court house or on the scaffold. The tragedies of Lady Jane Grey, Anne Boleyn, Laud, Russell, Raleigh and many other historic victims of injustice and cruelty are a heritage of memory common to all.

The tragedies I have chosen are less prominent but not less poignant. The trial of Lady Lisle is an object lesson in judicial infamy, as well as an historic tragedy. The Sandyford Mystery is a drama that in its day aroused a fever of controversy, whilst to my mind the fate of poor Kenealy, ruined through mistaken loyalty to a scoundrel client, is one of the saddest pages in the history of the Bar.

#### I. LADY ALICE LISLE

H. B. Irving's ingenious effort to whitewash Judge Jeffreys was scarcely a success, but he was

essaying the impossible. It was as if Lot had attempted to turn Sodom and Gomorrah into garden cities. Judged by the standards of his own day the man was a blackguard, and he carried his blackguardism on to the Bench and used it with joyful servility to please those from whom he expected advancement.

When he set out on the Bloody Assize he set out to enjoy himself, and in spite of a painful attack of the stone he seems to have supped his fill of bloodshed and bullying, and earned from James II, his worthy employer, the guerdon of the great seal.

That James and his faithful "man Friday" should have decided upon the judicial murder of poor Lady Alice Lisle seems to an ordinary human being unburdened by strong political and religious hatreds an almost impossible horror. But H. B. is right in admitting that "her fate had been determined before Jeffreys left London." It was thought that the savagery of it would strike terror into the opposite political party, so lovingly do weak unprincipled men hug the idea to their hearts that brutality is evidence of strength.

Jeffreys had examined one Nelthorp, a refugee and a party to the "crime," before he left London, and fully primed with the case for the prosecution he rode down to Winchester to open his campaign by convicting Lady Alice out of hand.

Lady Alice Lisle was a widowed lady of seventy years, of "gentle birth," as the older novelists used to say. She lived at Moyles Court on the edge of the New Forest, near Ellingham, in the valley of the Avon. She had taken no part whatever in the Rebellion and had been visiting in London when it took place. True, her husband years ago had been active on Cromwell's side, had fled to Lausanne and

been murdered there by Royalist mercenaries. But during the late reign Lady Alice, who had never been a political woman, had behaved with becoming loyalty and in this very Monmouth rebellion her loyal son had fought for King James. She was spoken of on all hands as a charitable Christian woman, a good neighbour to the poor, and in those troublous times had offered relief and hospitality to distressed Royalists and persecuted Nonconformists alike, remembering the word of the Master: "Inasmuch as ye have done it unto one of the least of these my brethren ye have done it unto me." This was the woman that in August, 1685, the Right Honourable Sir George Jeffreys, Lord Chief Justice of England, set out to destroy, to pleasure his lord and master, the illustrious James.

The story of the "crime" is soon told. One John Hicks, a Nonconformist minister, had been with Monmouth, and after the defeat at Sedgemoor had fled east as far as Warminster. Here he was taken care of by Dunne, a local baker, who sheltered him with his companion, Richard Nelthorpe, a lawyer already outlawed for his share in the Rye-house plot. Hicks, as a minister, was probably known to Lady Lisle, and on Saturday, July 25th, he sent Dunne across country, via Chilmark, Fovant and Salisbury Plain, to see if she would give him shelter. Dissenting ministers in that day were often flying from the wrath of their brother Christians, and there is no evidence that Lady Lisle knew he had been with Monmouth. It seems also clear on the evidence that she had no idea who his friend Nelthorpe was.

Unfortunately Dunne, when he got as far east as Salisbury Plain, did not know his way to Ellingham, and the road is no easy one to find across Fovant Down and Grim's Ditch to this day. He therefore

gave a fellow named John Barter half a crown to go with him, and this man overheard that Lady Lisle would receive her guests on the Tuesday. Dunne returned to Warminster and on Tuesday piloted his friends across by a somewhat different route to Moyles Court, where they arrived late at night and were given food and shelter.

Barter, being a loyal subject and having his suspicions about Dunne and his visit, went on Monday morning to Colonel Penruddock, who took some soldiers on the Wednesday and arrested Dunne, Nelthorp and Hicks and the lady of Moyles Court. Nelthorp was taken to London, Hicks was sent for trial at Taunton, and Dunne was used as a witness. Lady Lisle remained in the county jail at Southampton awaiting her trial on a charge of high treason.

The difficulties in the way of a conviction were twofold. In the first place there was a legal difficulty. Until Hicks had been convicted of treason himself it was very doubtful whether Lady Lisle could be convicted of treason in harbouring him. Lady Lisle had in those days no counsel to assist her in arguing this point. Jeffreys of course was the last man in the world to remember his duty to the prisoner in setting it out. It was left to the jury to raise their doubts on the subject, which the Chief Justice laughed to scorn, saying: "there can certainly be no doubt," though he well knew to the contrary. The matter was one of the gravest doubt and the prisoner was probably entitled to be acquitted on legal grounds alone.

But the second and chief obstacle was the hostility of Dunne, the witness, for unless he would say he had told Lady Lisle that Hicks had been with Monmouth there was no evidence that she knew

she was harbouring a rebel, for no charge was brought against her about Nelthorp, it being clear she knew nothing about him.

The drama of the case is to be found in the long dialogue between Jeffreys and Dunne, in which the judge breaks down the reticence of the witness by a masterly and powerful display of bullying, cajolery and threats.

It is a summer morning. The scene is set in the Assize Hall at Winchester. Alice Lisle, frail and old, is supported into the dock and holds up her trembling hand to listen to the long indictment charging the poor dear Christian woman with being "moved and seduced by the instigation of the Devil" to become a false traitor to that illustrious prince, James the Second. The old lady is deaf, and one Matthew Brown is allowed to stand by her and inform her of what passes in the court. She is said to have followed the proceedings with difficulty and to have slept through much of the trial, for she was comatose, old and infirm. When the poor woman tried to make a remark and informed the jury that she "abhorred that rebellion as much as anyone," Jeffreys was prompt to interrupt her with a long tirade on procedure, promising that she shall be fully heard "later on," a moment that never arrived.

But it is when the wretched Dunne enters the witness-box and Jeffreys braces himself together to give him, in his own boastful phrase, "a lick with the rough side of his tongue" that the grim drama really begins. Like the immortal Squeers, who began his half-yearly interview with his boys by mildly remarking: "Let any boy speak a word without leave and I'll take the skin off his back," Jeffreys was fond of thoughtfully explaining to a witness his true position.

Old Pollexfen for the Crown introduces Dunne as a hostile witness and "humbly desires his lordship to examine him a little the more strictly." Dunne is under no delusion as to his position. They may if they wish put him in the dock and hang him. They may if he does not give evidence to their liking convict him of perjury and whip him at the cart's tail in every market town in Hampshire. Such things have happened. And then, if his tongue slips and he betrays the innocent, how can he live and face his fellow-men and when his last hour comes die in his bed in peace?

Whilst these things are passing through his mind the awful figure of the judge in his red robe is bending to him with smooth courtesy at first: "Now mark what I say to you, friend. I would not by any means in the world endeavour to fright you into anything or any ways tempt you to tell an untruth," but remember among other religious precepts "that God of Heaven may justly strike thee into eternal flames and make thee drop into the bottomless lake of fire and brimstone if thou offer the least from the truth." And for fear this terror should be a little remote he adds in louder and more searching tones: "I assure you if I catch you prevaricating in any the least tittle—and perhaps I know more than you think I do—no, none of your saints can save your soul, nor shall you save your body neither. I will be sure to punish every variation from the truth that you are guilty of." He was more verbose than Squeers, but the spirit of the man was the same.

It was an encouraging beginning for poor Dunne, but for a while the man held his own. The examination continues through the long afternoon. When Dunne tried to escape from the ingenious



traps set for him by the Lord Chief the latter would explode with blasphemous asides to the jury.

"Jesus God!" he would shout out, "there is no sort of conversation nor human society to be kept with such people as these are who have no other religion but only in pretence." And again with a sneer he would turn to the jury and say: "You see, gentlemen, what a precious fellow this is, a very pretty tool to be employed upon such an errand, a knave that nobody would trust for half a crown between man and man."

John Barter was set up against him and their evidence taken in a sort of disjointed duet. It was at this stage that Dunne let fall a phrase to the effect that Lady Lisle had asked if Barter knew anything of the business he was on. Jeffreys seized upon the unfortunate word. "What business was it that Barter did not know of?"

"I cannot give an account of it, my Lord," falters the poor wretch.

"Oh, blessed God!" thunders my lord in a towering rage. "Was there ever such a villain upon the face of the earth?"

Long tirades break over the head of the unhappy Dunne, who remains silent or utters evasive replies. Barter is put up to contradict him. Penruddock is called to speak to finding him in the house. The judge calls on the King's Counsel to note Dunne's demeanour and see they prefer an indictment against him for perjury and the afternoon passes into twilight and the summer sun goes down, yet Dunne remains for the present firm in denials or respectfully evasive. "Dost thou think thou canst banter with me such sham stuff as this?" yells out the learned judge. "Hold the candle to his face that we may see his brazen face."

The tipstaff here holds a candle near his nose. As strange a stage direction in a legal drama as ever judge gave! Dunne mumbles out, "My lord, I am so baulked I do not know what I say myself; tell me what you would have me say, for I am cluttered out of my senses."

But this was more than even Jeffreys dared to take upon himself, and Dunne was removed whilst they took other witnesses.

Later on, as they sat into the night, Mr. Ramsay, one of the Crown Counsel, comes forward and says Dunne has agreed to tell all. What pressure of threat or reward had been made outside no one can now say. So in the dim candlelight enough is said to prove the case for the Crown. Poor Lady Lisle makes what defence she can and is continually interrupted by the impatient judge, who winds up a lengthy and dishonest address to the loyal jury with a careful reminder that the husband of the lady in the dock had a hand in the death of that blessed martyr, Charles I. With this parting irrelevance he bids them consider their verdict.

Three times did the jury brave the terrible judge with their difficulties and proposals of acquittal, and three times did he send them away, marvelling at their obduracy and threatening to lock them up all night if they did not hurry with their business.

At last they, too, cluttered out of their senses, agreed and came forward with their verdict.

In the dim court, lighted by guttering candles, the wretched old lady, roused from slumber, stood at the bar holding up her hand.

"Is she guilty of the treason whereof she stands indicted or not guilty?" asks the Clerk of Arraignment.

"Guilty," murmurs the foreman.

"Look to her, jailer, she is found guilty of

treason," says the clerk, turning to the dock, "and prepare yourself to die."

"If I had been among you," sneers my lord, "and she had been my own mother I should have found her guilty," and he adjourns to his lodgings for supper.

The next morning sentence is pronounced according to law and Alice Lisle is ordered "to be drawn on a hurdle to the place of execution where your body is to be burnt alive till you be dead." But this was insufficient for Jeffreys, who ordered the sheriff that he was to prepare for her execution that very afternoon, adding that she might have pen, ink and paper, and if during the two hours he remained in the town she employed them well some respite might be made. Whether this was intended to suggest a bribe of some kind or a confession implicating others is not clear.

The poor old lady wrote nothing and prepared for death. The cathedral clergy begged the judge for a few days' respite and obtained it. Later on, with great difficulty, the King was persuaded to alter the prescribed method of death to beheading, and on Wednesday, September 2nd, Lady Alice Lisle was executed on a scaffold set up in the market-place of Winchester.

She made no speech but handed a paper to the sheriff. H. B. Irving omits her farewell to Jeffreys, which should, I think, be preserved as a beautiful and resolute example of Christian charity. "I have been told the Court ought to be counsel for the prisoner, instead of which there was evidence given from thence; which, though it were but hearsay, might possibly affect my jury. My defence was such as might be expected from a weak woman: but such as it was I did not hear it repeated again to the

jury. But I forgive all persons that have done me wrong and I desire that God will do so likewise."

## 2. WILLIAM TERRISS

The tragedy of the murder of this fine actor upon the threshold of the stage is not only a sad and terrible story but it puts before us as a legal drama the problem of the treatment of the insane, and raises the question how far it is right that a man of anti-social habit should be allowed his full liberty and when he has slain an innocent victim be heard to say by way of excuse that he is not in his right mind.

It would probably be a wise reform if the question of the insanity of a person charged with a crime was tried out and settled by a strong committee of medical and legal experts before the actual trial for the offence, and not left to a jury of laymen as it is to-day.

For not only are jurymen unfitted by experience and education to decide a scientific question of this kind, but the very form and substance of the question itself is a matter of dispute and doubt between the professors of law and medicine.

The lawyers have long had a clear definition of what they mean by insanity. A judge will tell the jury that it must be clearly proved that at the time of committing the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing. This seems more or less clear and easy to understand. The medical definition of insanity carries us much further. Doctors consider that a man who is a victim of mental disease may know that a certain act is wrong and punishable by law, but an insane impulse arising

perhaps but not necessarily from delusion may overcome self-control, and an insane man may commit a crime, not because he does not know that he is thereby doing wrong, but because he cannot prevent himself doing it. The somewhat flippant answer of law to medicine on this subject is, "Would the criminal have done the deed if a policeman had been at his elbow?" It is a practical test.

To allow a human being to escape punishment for crime by pleading loss of self-control opens the gates of the dock from a lawyer's point of view far too widely and allows many real criminals to escape from justice. As a great scientist wrote: "There is a borderland between crime and insanity, near one boundary of which we meet with something of madness but more of sin, and near the other boundary of which something of sin but more of madness."

This truth was never better exemplified in any case than in the trial of Richard Arthur Prince for the murder of William Terriss in 1897. It is no exaggeration to say that William Terriss was at the time of his death the most popular actor on the London stage. The public had taken him to their heart. As Miss Ellen Terry says of him: "He was one of those heaven-born actors who, like kings by divine right, can up to a certain point do no wrong." For myself, as one of the audience, I should have omitted the words "up to a certain point." Terriss had the sense of the theatre so strongly imbued in him that he knew to a hairbreadth what his "certain point" was, and he never strained to reach the impossible.

I think the first part I saw him play was Squire Thornhill, at the Court, in the *Vicar of Wakefield*. Ellen Terry was Olivia, and Hermann Vezin, that admirable actor, played Dr. Primrose to my mind far

more effectively than did the chief himself when he revived the play in later years at the Lyceum. I think from the pit of the Lyceum we followed Terriss in his varied triumphs with as deep interest as we did Irving himself. His *Château Renaud* in the *Corsican Brothers* was a sound and excellent vintage of theatrical aristocracy. In *Cassio* I remember he struck a new note which endeared him further to our hearts. He made the Moor's lieutenant a picturesque figure, gallant and noble in his bearing, a natural friend of the great general, and his very weakness was almost amiable. *Mercutio*, too, was another portrait that dwells in the memory. He, too, was a very gallant gentleman. Little did we think when the actor fell back into *Benvolio's* arms crying, "I am sped. Is he gone and hath nothing?" that this was to be the real end of his own drama.

In the year 1897, though nearly fifty, Terriss was in the prime of life, strong, vigorous and alert and at the zenith of his theatrical career. He had captivated his audiences in pieces like *Harbour Lights*, in which you saw the ideal sailor man of *Marryat* and *Kingston* filling the stage with breeze and sea spray, and at the moment he was playing in an excellent melodrama, *Secret Service*.

Some years ago there had been at the Adelphi a super or small-part man who had appeared in *In the Ranks* and similar plays. He called himself William Archer or William Archer Hunt, but his real name seems to have been Richard Arthur Prince. He came from Dundee, where he had been an engineer's labourer. He was stagestruck as a lad and was a super at the Dundee Theatre in early life. Then he emigrated to London and got a small part at the Adelphi and toured in the provinces. He never



seems to have been an efficient actor and hardly rose above the grade of "super."

For many years this fellow seems to have nourished a hatred of Terriss. He was a vain, eccentric man and would stand at the wings watching the leading actor and muttering to himself, "Fools often succeed when men of genius fail." He certainly suffered from a delusion that he was a great actor, but this is not in itself evidence of insanity. But he deluded himself into the idea that in some way or other William Terriss stood in his way and hindered his advancement and kept him out of employment. There was of course no truth in the notion, and as a fact Terriss and many others had given the man money, and Terriss had himself stretched a point in the man's favour and written to the Actors' Benevolent Association to persuade them to help him. In so far as Terriss interfered with his career it was wholly as his benefactor.

In December the man was out of work and was constantly haunting the stage door of the Adelphi and making a nuisance of himself by his importunity. About a month before the actual murder he had bought a long, thin-bladed butcher's knife with a wooden haft. This he used to carry about, and there is no doubt that he had for some time premeditated the murder. He had been heard to threaten Terriss and he had threatened others to whom he took a dislike. Such people are unpleasant but not uncommon. On the evening of Thursday, December 17th, William Terriss and a friend came down in a hansom to the corner of Maiden Lane. Terriss walked to his private entrance to the theatre and took out his key to open the door. The assassin, who knew his movements well, was lying in wait for him and as soon as his

back was turned came up to him and stabbed him under the left shoulder-blade. He stabbed him at least twice before the actor fell to the ground, and was arrested after a short struggle with the bystanders and the police.

Doctors were summoned from Charing Cross Hospital and everything was done to save the life of his victim, but the man had planned the thing too well. He had struck to kill and had achieved his object. They carried the actor into the doorway of the theatre, but within a quarter of an hour or twenty minutes after the blow he had passed away. The curtain was just about to rise upon *Secret Service*. The manager went forward and explained that there could be no performance, and as the audience filed slowly out into the Strand they learned to their horror and amazement that their favourite actor would never tread the stage again.

The assassin was taken to Bow Street. Like all criminals he seemed vainly pleased with his success. He explained to the police that he would not attempt to run away, and no doubt was glad to be safely in their hands, as the mob that quickly gathered together were very threatening and would gladly have lost their self-control in dealing with the fellow. At the police station he said of his victim: "He has kept me out of employment for ten years; I had either got to die in the streets or take my revenge." When he handed the police the knife he remarked: "That is what I stabbed him with," and he continued to complain that Terriss had that very day prevented his getting assistance from the Benevolent Fund. This was of course absolutely without foundation.

His trial came on before Mr. Justice Channell early in January, 1898, and his advocate raised the

defence of insanity. A good deal of evidence was given to show that he had always been looked upon as more or less of a madman. He had threatened many people, including Mr. Elliston, in whose touring companies he had acted, writing him foul and offensive letters, calling him "Judas" and "hell-hound" and other wild and whirling epithets.

But if the writing of filthy epistles was always held to qualify the author for the asylum the acreage of these institutions would have to be enlarged. One of the minor evils of education is the temptation it seems to offer to a low type of humanity to read and write obscenity. Prince was foul-mouthed and handled a dirty pen when he was angry. But whilst in jail he wrote some shrewd and sensible letters to a friend, and in one of these he says: "I must see a doctor. I should like one of the best in London." He was quite sane enough to know that his best line of defence was to prove that he was insane and he was well aware of the value of good medical evidence to attain the verdict to which he looked forward.

There was some testimony that pointed to the fact that at times his mind failed him. A Newcastle manager related how he had given him a small part and found that he was unable to learn the words. Family evidence that he was passionate, ill-tempered, noisy and vain was readily forthcoming. It was said that his fellow-men in the engineering works regarded him as "soft" and teased him, and he had gained the sobriquet of "Mad Archer" in the theatre.

The doctors who were called were unanimous that the fellow was insane. They described him as excitable, incoherent in conversation, with a mind saturated with delusions of persecution. He showed no remorse and persisted in regarding what he had

done as an act of justice. This from a medical point of view seems of great importance, but to a lawyer it concludes nothing. Absence of remorse is a very common trait in all assassins. Brutus justified himself with the phrase, "Ambition's debt is paid," and the practical Lady Macbeth sets aside her troubles with the very sane observation: "Things without all remedy should be without regard." Macbeth, however, was full of remorse. It would be interesting to hear the opinions of the alienists on the comparative sanity or insanity of these characters, judging from their overt acts and spoken words before and after the murders.

Asked by the judge if he considered it made any difference if he thought the prisoner had premeditated the crime, the medical expert replied: "No, because insane persons do premeditate." He thought the prisoner had bought the knife with intention to kill Mr. Terriss and knew that he was assaulting him, but that he was mentally affected and harboured delusions until, being of weak brain power and weak control, he acted under these delusions, and in this sense he did not understand the quality of his act.

The case was left to the jury in the proper legal form, and their verdict was a very sensible one. They returned into court and their foreman gave their verdict in these words: "We find the prisoner guilty of wilful murder. We say he knew what he was doing and to whom he was doing it," and then they added, "but on the medical evidence that he was not responsible for his actions."

This was interpreted to mean that the jury found that he was not responsible at law for his actions, but the form of words they used showed that in their view as citizens the man had committed the

crime of murder and knew very well what he was doing, and should be punished for what he had done, but they felt bound to accept the medical opinion and give effect to it.

No doubt it is right and wise that in a case of this sort the medical view should prevail, but it does not seem consistent with the sacred dignity of the office of a jury to ask its decision on a fact of this nature unless that decision is intended to be accepted and acted upon. The jury did not find in fact that Prince was insane and not responsible for his actions, they only found in fact that the doctors had said so, and that the lawyers seemed disposed to accept their view.

### 3. DR. KENEALY

Had Dr. Edward Vaughan Kenealy been defending a victim of persecution, as he imagined in his heart of hearts he was doing, he would still as an advocate have been wholly unjustified in many things he said and did in his defence of Arthur Orton, the Tichborne Claimant. But before his brother members in the profession decided to cast him out from among them they should have been satisfied that the advocate had been guilty of something that was really dishonest.

The charge against him was that he put forward a perjurer named Jean Luie as an honest witness, knowing him to be a liar. The circumstances of his calling this witness are worthy of careful consideration. Many of his learned and honourable friends at the Bar, men like J. J. Powell, Q.C., of the Oxford Circuit, my father, Serjeant Parry, and others never believed that Kenealy with all his faults was guilty of any dishonest act. No one can read the story of the end of his career without tears of pity. A

profoundly religious man, a great scholar, a lawyer and advocate of standing, at the age of fifty-four, with a family dependent on his earnings, he was suddenly deprived of his right to practise his profession and thrown upon the world.

It was a sad day for Dr. Kenealy when he accepted a brief to defend the Claimant. It was a quixotic mission to undertake and Kenealy was utterly unfitted for the task. His first blunder was to believe in his client. To the day of his death he held firmly and honestly to the opinion that the Claimant was none other than Roger Tichborne and he expected that the real Arthur Orton would some day reveal himself and Sir Roger be released from jail.

He was tactless, prolix and filled with a burning zeal for what he considered a just cause. What he conceived to be his duty to his client sanctified for him the gravest lapses from the clear duty of an advocate. He insulted the judges, quarrelled with his brethren and wearied the jury with senseless repetition in spite of their continued protests against his waste of their time.

No advocate could have acquitted Arthur Orton, but skilful advocacy might have hoped to have gained a disagreement of the jury. Dr. Kenealy made conviction certain. He was guilty of every possible indiscretion, but I have never been able to convince myself that he acted dishonestly in anything that he did, or that he was treated with justice by the Bench that disbarred and ruined him.

It was known that he was suffering from disease and was doing his work under a great mental strain. Those who knew him well believed in his integrity and pardoned his gross errors as being committed out of misplaced zeal and enthusiasm. His brethren might have shown the unfortunate man more mercy.



It is true he insulted the judges ; but the judges had full power to take care of themselves. He had conducted his case with irrelevance and wasted days of valuable time ; but, alas, that has been done by counsel before and even since. He had outraged his fellow-barristers' feelings by shaking hands with Arthur Orton after his sentence. But put yourself in his place. Remember that Kenealy firmly and honestly believed that the man was Sir Roger Tichborne and the cruel victim of injustice, and then that handshake has something honourable, even heroic, about it. At the worst the gesture was only an error of taste.

It is not easy to agree that Kenealy so badly overstepped Lord Brougham's maxim that "an advocate must defend his client at all hazards" that he deserved being unfrocked by his fellow-advocates. The only charge which, to my mind, could justify the extreme penalty of depriving Kenealy of his livelihood and disgracing him in the eyes of the world was the suggestion that he had been guilty of dishonourable and even criminal conduct in asking the jury to treat Jean Luie as a witness of truth when he knew he was a perjurer. Kenealy always said that he did believe in Jean Luie at first and that when he was proved to be a liar he at once gave him up.

I am not clear that he gave him up as soon as he should have done, but I am quite satisfied that he believed in Jean Luie at first as firmly as he believed in Arthur Orton to the day of his death.

"Should the rest of the world think the Claimant a dodger, Lady Tichborne declared him her dear son Sir Roger."

Dr. Kenealy was of the same opinion and for the same reasons. He was a man of abnormal tempera-

ment, and held mystic religious views, deeming himself a "Messenger of God." And when he heard that a sailor had been found who had picked up Sir Roger Tichborne in the ocean, and was ready to say so, it came to him almost as a message in answer to prayer.

The enormous importance of Jean Luie's evidence can only be understood by remembering the position of affairs when he came forward. The Claimant was on his trial for perjury and things were going badly with him. There were still large numbers of people who believed him to be Sir Roger Tichborne. The Crown pinned their faith on the theory that the Claimant was Arthur Orton. Now there was no manner of doubt that Sir Roger Tichborne had sailed from Rio in April, 1854, in the *Bella*, which disappeared and, as far as was known, no one who had sailed in her was ever again seen alive.

The Claimant, to account for his existence as Sir Roger, had told the tale that he had been saved in a small boat which had been picked up by a vessel called the *Osprey*, which carried him to Australia. At the civil trial in which he endeavoured to oust the Tichbornes from their estates the Claimant had told this story in circumstantial detail, but he had not been able to call any witnesses to prove the truth of his statement. When he was put in the dock and tried for perjury it was clear that, if he could prove that he had in fact been rescued by the *Osprey*, then he could not possibly have been Arthur Orton and it was not improbable that he was Sir Roger Tichborne and, in any case, if the jury believed the story of the rescue the Claimant would certainly have been acquitted of perjury and been a free man again.

You can imagine the excitement and stir in court when Dr. Kenealy announced, on August 8th, 1873,

in his speech for the defence, that he was going to call a "person belonging to the *Osprey*, which took up the shipwrecked sailors of the *Bella*." He gave no name of the witness, but in answer to the Lord Chief Justice said the *Osprey* was an American ship from the port of "New Bedford," and announced that "the witness is a witness of truth that will dissipate a great many of the mists and clouds and delusions that have unfortunately existed with reference to this case." The delusions, unhappily, were Dr. Kenealy's and the Crown was put to great expense in removing them, for Jean Luie was as big a liar and scoundrel as Arthur Orton himself.

Jean Luie was called on October 14th. The friends of the Claimant were full of triumph and openly applauded the rascal in court. It must have been a unique experience for the Claimant to listen to this strange romancer detailing the lying story he had himself invented and adding picturesque particulars of his own. The witness certainly looked the part. He was a rough, open-featured, bearded, weather-beaten fellow who might well have sailed the blue ocean and brought home strange adventures.

The tale told by Jean Luie had the appearance of being a very honest story. He was, he said, a native of Denmark, and steward of the *Osprey* in 1852. He went to Rio in 1853 and there saw a Captain Brown. In February or April, 1854, he sailed from Staten Island, New York, on a voyage to Melbourne. It was during that voyage that they picked up a boat containing six men in dire distress. Four of these were delirious and the two who still kept their reason, Jarvis and Lewis, were feebly paddling the boat. They were lifted on board the *Osprey* and it was found that one of them was not a sailor but a

gentleman on whom he, Luie, as steward, attended until they arrived at Melbourne, which they reached in July, 1854. He thought the gentleman called himself Rogers, but he lost sight of him and never saw him again until he recognised that the Claimant was the very man who had been rescued and had sailed with him in the *Osprey* to Melbourne.

He gave full details of his career up to 1873 and said that in that year he came over from America in a vessel called the *Circassian* and had gone to Belgium to look after his wife, who had deserted him, and on July 5th, coming to London, he heard someone talking about the Tichborne trial, and it was mentioned that the Claimant had told this story about the *Bella*. At once Luie remembered the rescue on the *Osprey* and the man Rogers. He must in justice to this poor fellow get in touch with him. He tried to meet the Claimant and after a while found his solicitor, Mr. O'Brien, to whom he made a statement; he was taken to Mr. Whalley, a barrister and a magistrate who was a firm and consistent believer in the Claimant, and by him was triumphantly carried off to Bessborough Gardens to see Sir Roger. As soon as they meet, the Claimant addresses his old attendant in Spanish, "Como esta Luie!" The honest sailor is no less backward in memory and respectfully recalls the incidents of his life on board the *Osprey* when the Claimant passed as Mr. Rogers.

No one could hear the bluff fellow's story without being deeply affected. One could see him in the mind's eye twenty years ago tenderly lifting the delirious Mr. Rogers on to the deck of the *Osprey* and carefully tending him and nursing him back to health. And once again, so strange are the ways of Providence, when Mr. Rogers is standing in the dock surrounded by enemies and calumniators and on the

verge of going down in a more disastrous wreck than that of the *Bella*, here from out of the void comes this good sailor man to throw a rope of honest testimony, as it were, to the rescue of a fellow-creature overwhelmed by waves of prejudice and falsehood.

It was a dramatic moment, and to a man of high-strung imagination like Dr. Kenealy, with his incurable belief in the Claimant, it must have appeared as if the dawn of triumph was at last breaking through the grim mists in which he had been struggling to find light.

But the Crown counsel were not prepared to accept Jean Luie without the most searching investigation. Adjournments were granted and inquiries were made. Witnesses were called and, bit by bit, Jean Luie was picked to pieces and put together again, and the true story of him became known. The recital of it must have seemed a grim miracle of judgment to the simple Luie as he heard every detail of his career docketed and repeated that the jury might know what manner of man he was.

Jean Luie, a name of almost Stevensonian savour, and so entirely consonant with kindly stewardry, was but his theatrical name. Vanity and conceit were his ruin. The popular sailor man was photographed and his picture sold in thousands, to his great delight. The camera was his betrayer. Some prison warders saw his photograph and recognised an old friend. They went to court and had a look at him. The game was over. The fellow's real name was Carl Peter Lundgren and he was a native of Gothenburg. In 1852 he was a master of a vessel called the *Isabella*, and in 1853 he entered the service of a Swedish merchant at Hull as water clerk. Here he remained during 1853 and 1854. At the very

date that he swore he was on board the *Osprey*, on another voyage from Staten Island to Melbourne, the detectives had actually found a document signed by Lundgren himself, bearing date Hull, October 7th, 1854, which put the matter beyond doubt.

He then went to Cardiff and later, on April 2nd, 1855, he was married at the parish church of Melksham, in Wiltshire, and the register was there to prove it. Then he started on a sad voyage indeed, for it was discovered that in 1862 he was arrested for a criminal offence, convicted at Bristol and remained in jail until 1865. It was in 1864 that he said he had seen the captain of the *Osprey* in New York, but in truth and in fact he was at that time walking round a wheel in a common prison. In October, 1865, he was again in custody at Newcastle and remained in prison until July, 1866. He was in London in 1867 and in October of that year was sentenced to seven years' penal servitude. He remained under lock and key until 25th March, 1873, when he was released at Chatham on a ticket-of-leave. He was broke to the world and was living on borrowed money when on July 7th he presented himself at the Claimant's solicitor's office at 2 Poets' Corner. That was the true story of Jean Luie.

The scoundrel had heard talk of the Claimant's case and the way in which it was being got up and scented money in the job. He threw himself in Mr. Whalley's path at Brussels and told him the tale about the *Osprey*. Whalley jumped at the fly and swallowed it whole. He sent him to O'Brien, the Claimant's solicitor, who told the Claimant of it. Of course Arthur Orton expressed his delight at the find and the two ruffians met and must have winked the other eye at each other over the simplicity of their dupes.



Jean Luie and another perjurer, Captain Brown, who backed up his story, were both tried for perjury, after the Claimant was convicted, and sentenced to seven and five years respectively. It was, of course, a grave error of advocacy to put forward such creatures as truthful witnesses, and when Kenealy's suspicions were aroused, as they should have been after Luie's cross-examination, he should never have continued to express his faith in them. But I am convinced that when Dr. Kenealy put Jean Luie into the box he had no inkling of his true character, and his memory deserves that it should be recorded that the charge of dishonesty against him was not proven.

#### 4. THE SANDYFORD MYSTERY

One of the least satisfactory and most extraordinary criminal trials of the nineteenth century was the trial of Jessie M'Lachlan for the murder of Jessie M'Pherson, which took place at Glasgow on September 17th, 1862. The case gave rise to a small literature of its own running to several pages of bibliography, but the leading facts of the strange drama may be set down with fairness to the actors within the curtailage of a short story

No. 17 Sandyford Place was a small house in a neighbourhood of middle-class respectability. Two stories above ground, with five windows and a door, little iron balconies, a stone balustrade along the roof, stone steps into the street, and peeping coyly through the area railings the windows of Jessie M'Pherson's room in the basement where she was cruelly murdered.

She was the servant of Mr. John Fleming, a respectable accountant. This gentleman had, besides the Glasgow house, a country place on the

Clyde near Dunoon. Hither he went on Friday, July 4th, to spend the week end with his womenkind who were living there during the summer. He and his son, a young lad, left home on the Friday morning for the office, and after business hours went down the Clyde to Dunoon without returning to Sandyford Place.

In the house remained Jessie M'Pherson, the servant, who had been with the family for some time, and Mr. James Fleming, a hale, active old man, eighty-seven years old, as he said, though some declared he was but seventy-eight. He was a man of great respectability and helped his son in his business, collecting rents and doing other light jobs.

This was the scene upon which the curtain fell on the Friday morning. Three and a half days elapse and it is in that space of time that the tragedy is happening behind closed doors and drawn blinds.

On Monday afternoon the young man returned home about 4.30. He had been to the office and not finding his grandfather there came home. He knocked at the door. The old man opened it. This surprised the lad.

"Where's Jessie?" he asked.

"She's away; she's out. I have not seen her since Friday."

He asked his grandfather if he had tried the door. The old man said: "No; I thought she was away seeing her friends and that she was coming back again."

With uncanny instinct the boy replied: "Then she's off, or she's lying down there dead."

At this moment the father came in. As soon as he was told of Jessie's absence they all went down to the basement where the servant slept. Her room

door was locked. The father found that the pantry key would open the door. They entered the room. There was the half-naked body of the murdered girl lying on the bed. The old man cried out: "She's been lying there all this time and me in the house!"

John Fleming, the accountant, rushed off to Dr. Watson, with whom he returned immediately. An examination showed that the wretched woman had been deliberately murdered. There were forty wounds, apparently made by a cleaver or some similar instrument.

The state of the kitchen, where a fire was burning, showed signs of bloodstains, and the mat and the lobby were similarly stained. The floors of the kitchen and bedroom and flags of the lobby had been recently washed. So had the face, neck and chest of the corpse. In the bedroom the poor girl's box had been rifled. Her best clothes were gone and on the bedroom floor were three imprints of a bloody foot. Upstairs on a chest of drawers in which the grandfather kept his things were two of his shirts newly dressed spotted with blood. In the kitchen drawer was an iron cleaver.

This was the murder. The police and the doctors reconstructed it with no great difficulty after this fashion. The woman had been brutally murdered within three days of the discovery. There had been a severe struggle. The cleaver had probably been used, and the injuries were inflicted before or immediately after death, probably by someone standing over her as she lay fallen to the ground. The blows were not inflicted by a person of great strength. The body had been drawn along the lobby from the kitchen to the bedroom.

On the Monday night Mr. John Fleming missed

some silver and plated articles from the dining room and on Wednesday the police discovered these had been pawned between 12 and 1.0 on Saturday, the 5th, by a young woman who had given a false name and address. The murder, therefore, was probably committed on Friday night or Saturday morning.

Before this discovery the police had detained old Mr. Fleming. The case against him was of course very suspicious. All he could say on this matter was that from his bedroom on the ground floor he had heard screaming on the Friday night, and in the morning he had found the girl's door locked, and that he had lived in the house alone for three days without making any inquiry about her. But the discovery of the stolen property led to the arrest of Jessie M'Lachlan. This woman was the wife of a ship's mate. He, too, was arrested but soon released as it was clear he was in Ireland at the time of the murder.

Jessie M'Lachlan, however, was up against a lot of strange facts, and after the manner of her kind made them worse by telling numerous lies about herself and her movements. She was not allowed at that date any legal advice. But in Scots fashion she was cross-questioned and examined by police and doctors and prosecutors, and the case against her grew daily in strength and circumstance.

She had in the end to admit pawning the plate for £6 15s., and said she had done it for Fleming. The clothes of the murdered woman were found in a tin box, her property, which had been sent away to various places, but now given up by her husband to the police. Dr. Macleod was permitted to make experiments with the woman's feet, smearing them with some animal blood and thus obtaining exact

replicas of the bloodstained footmarks on the bedroom floor, the planks of which had been sawn out and made exhibits for the Crown case.

The police conduct of the case was gravely criticised later on. There was, however, something to be said in their defence. The evidence against old Fleming was only suspicion, but against Jessie M'Lachlan they could prove clandestine dealing with the property of the murdered woman. If they put both prisoners in the dock the case against both might fail and they would only get a conviction against Jessie for larceny. But if they treated the old man as a witness of truth they might convict the woman of murder. They therefore released the old man and cited him as a witness against Jessie M'Lachlan, whom they charged with murder.

In Scots law this was tantamount to an acquittal of the old man in any participation in the crime, as a Crown witness could not, after giving evidence, be put in the dock. There was a storm of indignation when it was known that Fleming was released. All Glasgow was divided into two camps, Flemingites and M'Lachlanites. Each had its party Press. The newspapers bribed the prosecutor's clerks for news from the seat of justice. Circulations rose from ten thousand to fifty thousand a day. Everyone in Glasgow read denunciations of Fleming or the prisoner and discussed the evidence.

In this unhappy atmosphere Lord Deas took his seat upon the Bench, the jury were sworn and the trial proceeded. The prisoner's counsel had put forward a special plea that "the murder alleged on the indictment was committed by James Fleming." The fact is that they held at that time a full statement of the prisoner as to what had happened on the Friday

night and Saturday morning, but it was impossible to make use of it without injuring the woman in the dock.

The old man's evidence was very inconclusive. He was treated by Lord Deas as a witness of truth, but Mr. Adam Gifford for the Crown wisely and judicially reminded the jury that they were not investigating his guilt or innocence. Certainly if he were innocent he had placed himself in a sad predicament by his strange conduct. But he seems to have given his evidence with a certain frankness and in a dialect that makes it very graphic in its description of facts.

On Friday night, he said, he had his tea and sat with Jess until 9.30 by the kitchen fire. "At that hour I said I would go and mak' ready for bed; and I went away to my bed up the stairs. I left Jess M'Pherson working away in the kitchen ye ken and in the morning I was wauken't wi'a lood squeal." Here he explained that his bedroom was in the flat above the kitchen. "Weel, I was sayin' I was wauken't i' the mornin' wi'a lood squeal; and after that followed ither two not so lood as the first ane. But it was an odd kind o' squeal I heard and I jumped oot o' bed and I heard no noise. A' was by in the coorse o' a minute's time; in a minute a' was quate and I heard naething nor saw naething. I took oot my watch, I kept the time below my pillow and looked what a clock it was. It was exactly fooer o'clock, a bonny clear mornin'. I gaed awa' to my bed again. A' was quate."

Then he told the jury that he thought at the time that Jessie must have had her sister with her in her room. But that any man having heard these sounds in the night and connected them apparently with Jessie should have stayed in the house until the



Monday afternoon without making any inquiry after her seems almost impossible of belief.

The prisoner's counsel exposed many inconsistencies in his story, but Lord Deas continued to the end to treat him as a witness of truth. From the first the judge believed the woman to be the sole murderer. When he took his seat on the last morning of the trial he placed the black cap on the bench before him ready for use, and so deadly was his summing up that the jury were able to return with their verdict of guilty after only a quarter of an hour's absence. When the verdict was given the woman in the dock expressed her desire to make a statement, and this was permitted by the judge. Her advocate then read in grim detail her account of the part she had played in the tragedy.

On Friday night she had gone to Sandyford Place about 10.30 and found old Fleming sitting in the kitchen with Jessie M'Pherson. They had a dram together. Jessie complained about the old man's conduct to her. About 11.0 the old man sent M'Lachlan out for more drink. When she returned the old man opened the door. She asked where Jessie was and got no reply. She went downstairs and found her lying insensible and moaning on her bed. There was a cut on her head and blood on the floor. She had nothing on but her polka and shift. The only account she could get was that the old man had not intended to hurt her. It was an accident. She got the poor woman to a bed at the kitchen fire. Fleming refused to go for a doctor.

Through the night the old man was wandering alone and the prisoner sitting near the injured woman. Early in the morning she seemed worse. The prisoner had gone upstairs to open the windows

to see if anyone was yet about. The front door was locked. Coming back again she heard screams and saw the old man striking at her with the meat chopper. She herself was then in the old man's power and at his suggestion took away the things he gave her to pawn so that it might be made to appear that a robbery had been committed. This at long length and with wealth of detail was the woman's story of the terrible night in that little house at Sandyford Place.

The crowded court heard it with breathless interest, but the judge dismissed it and sentenced the woman to death, telling her that her story was a tissue of lies.

But this is not how it appeared to the world nor to many grave jurists who expressed strong objection to the "dexterity, cunning and pettifoggery" with which the police had worked up the case against the prisoner and criticised the conduct of the prosecution. The statement may have been one wicked lie, but it was not a tissue of lies. It fitted with Defoe-like circumstance into the proved facts of the case, and it had been written and in the hands of her agents before she knew what facts were going to be proved.

The Government ordered an inquiry. Sir Archibald Alison, the Advocate Depute who had prepared the indictment, sent in a memorial. He takes pride in recording: "That the best and most elaborate law paper I ever wrote was composed in my seventieth year to shield a prisoner threatened with death from what would in the circumstances have been a judicial murder."

The conclusion he arrived at was that the woman's story was true and that the prisoner was an accidental and constrained witness of the murder. The Home

Office seem to have accepted his view, and on the ground that she was an accessory to the murder after the fact they commuted the death sentence to one of penal servitude for life.

When Jessie heard the results of his efforts she in no way shared Sir Archibald's enthusiasm and merely sniffed her disappointment, saying: "And so I'm tae be kept in jail a' my days."

As for old Mr. Fleming, he retired to Quellan and read the newspapers with peaceful interest, wrote autographs for his admirers and died in the odour of sanctity.

## CHAPTER THREE

### CONCERNING COMEDIES

1. THE JACKSON CASE. 2. THE LAW AND LADY ROSINA. 3. THE ABDUCTION OF MISTRESS PLEASANT RAWLINS

IN a sense there is no such thing as true comedy in a lawsuit. Comedy connotes a happy ending. No legal drama has a really happy ending. There are always the costs.

But without stretching the analogy to breaking-point there are many dramas of the law in which the element of comedy predominates. The story of the piece has its merry moments, and the dialogue of counsel and witness or the judicial quip moves us to laughter. The characters amuse us with their self-love, vanity and conceit, which are the basis of comedy, and we smile at their follies and caprice. We forget for a time that we are in the precincts of the law courts and allow ourselves to be entertained by the frailty of human nature.

Of the legal dramas here set down as comedies the adventures of either Mrs. Jackson or Lady Rosina might have served for the basis of a Victorian comedy of manners and social ideals, the dramatist lightly touching perhaps on the problem of woman's emancipation in the classic style of Pinero.

Remembering Lord Ogleby's maxim: "I look

upon women as the *feræ naturæ*, lawful game, and every man who is qualified has a natural right to pursue them," then you must admit that the abduction of Pleasant Rawlins is a typical eighteenth-century comedy. Had the hero been a Fainall or Mirabel, some rake-helly hero of the gentry hunting a city heiress, the pit would have whooped with pleasure at the stratagems of the chase. Even this story might well have ended with feasting and wedding bells but for the statute. Statutes, however, have neither humanity nor humour. They are in language, grammar and common sense real *biblia a-biblia*, unreadable and unread. Even in courts of law no one ever reads a statute. They are only quoted. Their disastrous effect on human happiness has made them rightly repellent to men of generous minds. Even judges, the kindest and most tolerant of creatures, can scarcely hide their contempt for statutes that enact the opposite of what their author intended and only serve to entangle the simple and innocent in a net of ruin. But for a statute turning the affair into a grim tragedy the plot against Pleasant Rawlins was a merry comedy measured by the standard of merriment set up by the dramatists and audiences of the eighteenth century.

## I. THE JACKSON CASE

Emily Emma was the heroine of a legal problem play. One can picture the expert producer racking his brains for the apt title: "The Amazing Marriage," "The Taming of the Slug," "What the Judge Said," "A Woman's Triumph." But before you clapped a title to it you had to settle what sort of play it was to be—a merry farce, a drawing-room comedy, or a melodrama? You could make it any of these things, or some of each, but you could not

leave out the problem, the legal problem, which, put in a phrase, came to this : " Does a wife belong to her husband ? "

Countless generations of English mankind had lived in the fond belief that their wives belonged to them. You get the note of property in the emphasis on the pronoun when a mere man says, "*My missis.*" Thus you are sure of your sensation in the great Court of Appeal scene where Lord Halsbury and Lord Esher bundle the legal tradition of centuries on to the rubbish heap and announce to the poor husband, who is asking if his wife belongs to him, that the answer is in the negative.

The Jackson case, as it was called, created world-wide excitement, and well it might. It was the first test match between woman and man, and the latter, who started a hot favourite, was beat to a frazzle, and is never likely to recover the ashes. In the Temple the betting was any odds against lovely woman. For a lot of lawyers, foolish fellows, really seem to have believed that a wife was under the personal dominion of her husband. They regarded Petruchio as a real heavy-weight champion and Katharine as merely his sparring partner.

One Bacon, a lawyer—not the fellow who is charged with writing Shakespeare's plays—had set it down in his Abridgment of our law that a husband may by force keep his wife within the bounds of duty and may beat her, but not in a violent manner. Blackstone tells us that " in the politer reign of Charles II this power of correction began to be doubted." Steele, writing in the *Tatler* in 1712, suggests that a wife may properly be " corrected with stripes ; but one of our famous lawyers is of opinion that these ought to be used sparingly." As late as 1782 Mr. Justice Buller is said to have ruled



that a man might lawfully beat his wife with a stick if it were not thicker than his thumb. Gillray caricatured Buller as Judge Thumb, and the ruling is often referred to, though I have never been able to find a contemporary record of it.

These *dicta* remained in the text-books. The rusty old law folios seemed to agree that a wife was very nearly legally akin to the other household chattels of a husband, and but for the strange happenings of Emily Emma these old legal traditions might have prevailed until this day.

The story opens on November 5th, 1887, when Emily Emma Maude Hall is clandestinely married at St. Paul's Church, Blackburn, to Edmund Haughton Jackson. Emily Emma has a fortune of £27,000, and it is said that Edmund H. is not a man of means, but both parties are of full age, the husband over forty, and why they did not walk away and enjoy their honeymoon does not transpire.

On the marriage day Emily Emma returns to her relations and Edmund H. travels to London, *en route* for New Zealand. It is arranged that she should follow him in six months, but, alas, in his absence, she changes her mind and later on writes to ask him to return to her in England. This the faithful Edmund does, but on arrival finds that his wife has again changed her mind. She refuses to live with him, refuses even to see him, and will not answer his letters.

Patient Edmund waits until July, 1889, and then seeks advice of lawyers. An application is made to the courts, and the first act of the legal drama is taken up with the merry farce of obtaining an order for the restitution of conjugal rights. This order is readily made; it is never supposed that it will be obeyed, and the court has never the slightest in-

tention of enforcing it. As in many another case, when the order was drawn up and served on Emily Emma, she snapped her fingers at it, laughed the court to scorn, and poor Edmund found that except for the privilege of paying a bill of costs there was nothing doing.

Edmund Haughton lies low and says nothing. Again he consults the lawyers and studies law books, and at length, on March 8th, 1891, with two friends, a young lawyer and a doctor, he sets forth to make history.

It is a Sunday morning. At the door of Clitheroe parish church stands a carriage and pair with a coachman in livery. The service is over. Unsuspecting Emily Emma steps out into the churchyard with her sister, Mrs. Baldwin. Three gentlemen are seen to approach the two ladies and seize one of them. There is a vigorous but brief resistance. Emily Emma is detached from her sister and carried forcibly by her husband to the waiting carriage. She is dragged backward and falls into the carriage, so that the young lawyer has to gather up her feet before he can close the door. The congregation look on indignant. The coachman whips up his horses and away they speed to Edmund H.'s house at Blackburn. In this way does the hero carry out the order for restitution of conjugal rights.

Within an hour the Baldwins and other relations have galloped to Blackburn to the rescue. But Edmund H. has barred doors and windows and refuses admittance. The Chief Constable of Blackburn is called in but refuses to make forcible entry, remembering perhaps that the Englishman's house is his castle.

The relations sit down before the castle in medieval fashion and start a siege, day and night. The

besieged inhabitants take in stores by a line through an upper window. The police patrol the street to see there is no bloodshed between the parties. The world looks on in amazement, and able editors indite leaders on the rights of husbands and the duties of wives.

It should be stated in fairness to his memory that this modern Petruchio treats his wife with every kindness. There is a nurse to wait upon her and a doctor to attend her. Her only complaint is that when they arrive at the house her lord and master pulls off his lady's bonnet and throws it in the fire. This, as I take it, was merely a symbolic action, as when one butters the paws of a kitten to keep him in the house.

But meanwhile; in the outer world, public excitement grows apace. Great lawyers in London are consulted, and some genius suggests the use of that palladium—or is it Coliseum?—of English liberty, the habeas corpus.

The world breathes a sigh of relief at the very mention of it, believing with Sam Weller "that the have-his-carcase is one of the blessedest things as was ever made." The way the have-his-carcase is worked is as follows: You go to the King's Bench and tell them someone is imprisoned. A writ is then issued in the name of His Majesty calling upon the custodian to bring the body of his prisoner to see the judges, that they may ascertain whether his imprisonment is legal.

Emily Emma's relations made their application for a habeas corpus to Mr. Justice Cave and Mr. Justice Jeune, and to the dismay and surprise of the world at large these learned judges saw no reason why any writ should issue. As Cave J. muttered in his grumbling fashion, "a husband has a right to

the custody of his wife," and there's an end of it. A court had ordered Emily Emma to go and live with Edmund H. and he had got her. Well, what is there to argue about?

The old lawyers in the Temple nodded their heads gravely and chuckled, saying, "I told you so." Some of the younger generation, however, were doubtful, and there was great satisfaction when it was heard that the protection of the Court of Appeal was being invoked by the lady's friends.

So on March 19th, 1891, the last scene in the drama opens. Emily Emma enters a crowded court. She is dressed in a black silk dress, a sealskin jacket, with Medici collar, black bonnet and veil, and black kid gloves, as if in mourning for her lost liberty.

I have always thought it was a matter of great good fortune to the world that the Appeal Court on that morning included Lord Halsbury and Lord Esher, two of the greatest lawyers of our time, men whose eyes could pierce the fogs and mists of the law and see the sun of justice that shines eternally above.

Let us be thankful, too, that we have never cribbed and confined our common law into a narrow code, and that our great judges are still endowed with power to burst the shackles of prejudice and tradition and state the true justice of a cause in accord with a modern standard of right and wrong.

Lord Halsbury swept away the mouldy precedents that had satisfied the legal minds of Cave and Jeune. Those quaint sayings about the right of a husband to beat his wife "are not, I think, now capable of being cited in a court of justice in this or any civilised country."

It is a simple saying, uttered in the same spirit in which Lord Mansfield had decreed that slavery was

“so odious” that it could not have a place in English law, and it will be cited wherever English law prevails as the Magna Charta of women’s freedom. One of the sane and healthy attributes of our legal system is the power that remains with the judges to recognise that old law may become obsolete, and it is their privilege and duty to shape old precedents to new and better ends.

When Lord Halsbury had spoken and the Clerk of the Court had endorsed upon the writ, “Return held bad and wife to go free,” the world had advanced a great stride along the highway of justice and civilisation.

## 2. THE LAW AND LADY ROSINA

Rosina Wheeler was a beautiful Irish girl. I like to picture her at Old Government House, Guernsey, in the glorious reign of her uncle, Sir John Doyle, mimicking the Duc de Bouillon and the other stately guests, the pet and hoyden of his splendid establishment.

Fate decreed that she should marry Edward Lytton Bulwer—your literary man makes but an indifferent husband—and after a short and unhappy married life they executed a mutual deed of separation and lived apart. Her sad story is set out in many memoirs. Her whole life was an embittered struggle to publish and obtain redress for her wrongs, some cruel enough, others perhaps illusions, but all painfully real to her vivid lonely imagination.

It was in 1840, when she was living alone in Paris, that she was called upon to play the leading lady in a comedy enacted in the Sixth Chamber of the Correctional Tribunal. It is interesting to-day as showing how harshly the law could treat lovely woman. It created wide excitement, not only in

the fashionable circles of Lady Bulwer's friends in Paris, but throughout England and even in America, where the decision was widely canvassed, as a gross injustice to the sex.

The play opens in Lady Bulwer's apartments at No. 30 Rue de Rivoli. Sir Edward had set in motion an attorney named Lawson to watch his wife, a course as unfortunate as it was unnecessary. Lawson had a fat comedian of a clerk named Thackeray who after the manner of spies in a transpontine drama made love to the cook at No. 30. The faithful Phœbe lures him on with promises of secrets and makes an appointment with him to come and drink tea with her in her ladyship's absence.

Her ladyship now sends for her lawyer, M. Charles Ledru. A plot is formed. Letters are temptingly left on the secrétaire. Tea is prepared and Phœbe opens the door to the fat Thackeray, in her best cap and ribands. All goes well. The amateur spy walks into the drawing-room, and as he is handling the letters, under the subdued light of the usual red lamp, Lady Bulwer, M. Ledru and two gendarmes step forward from an inner chamber. The terrified spy is taken, *en flagrant délit*, red-handed, the pert Phœbe trills her insults at him, Lady Bulwer points to the door, and the gendarmes put their hands upon his shoulders. "Lâche! misérable! infâme!" cries out the indignant M. Ledru as the curtain falls on the end of the first act.

When the curtain rises again we learn that M. Ledru has sought for his client the protection of the law. Proceedings were taken for subornation and bribery of witnesses, trespass and attempt to purloin documents, and also for a libel published by Thackeray in the *Gazette des Tribunaux*. The court has adjourned to enable M. Odillon Barrot



to receive instructions from Sir Edward. The unchivalrous husband, Petruchio-like, refuses to allow his wife his permission to plead her case before the French Tribunal. He asserts the Saxon chattel theory of marital rights. His wife is his property and he objects to his property proceeding in a foreign court for the protection against wrongs done by his own agent.

Can the French Tribunal proceed? The court wishes to be advised. It summons Lady Bulwer to appear in person. Popular sympathy is expressed for the distressed damsel, and strong things are thought and said about the dragon of a husband. But what is the law? The lady is represented by the great M. Berryer, "with him" are Morisot, Chaix de l'Estrange and Charles Ledru, a noble team of advocates. M. Blanchet is for Lawson and Thackeray. M. Barrot, the stern unbending French Radical, for Sir Edward. M. Ternaux, for the Procureur-du-Roi, watches the case in the interests of State.

On Friday, March 27th, the trial takes place. Long before the proceedings begin every corner of the court is occupied. Fashionable spectators are indulged with seats within the Bar. A dense mass of elegantly dressed ladies, the élite of English and French society, throng the court. Nothing else has been talked about in the boudoirs and drawing-rooms of Paris for many a day but "L'Affaire Bulwer." It cannot be believed that the law of France, the most courteous and chivalrous of nations, can refuse the prayer of a beautiful lady so wronged and distressed.

At eleven o'clock, as the clock strikes, enter M. Pinondel and four other judges, who take their seats on the bench. The representative of the

King's Procureur sits in a box at their right watching their proceedings with careful eye. Thackeray and Lawson sit uncomfortably below the prisoner's dock, wondering perhaps if they will later on be asked to take their seats inside.

A few preliminary legal skirmishes open the entertainment. Counsel for the accused claims that they acted under Sir Edward's instructions and are protected as mere agents working for a principal. Barrot claims that he appears for the principal, who forbids his wife to proceed in the matter. Berryer, the great Berryer, waves them aside and declares amidst murmurs of applause that no Sir Bulwer has a right to give latitude to his agents to violate the laws of the kingdom. He proposes to prove that an offence has been committed by Messieurs Lawson and Thackeray. They have broken the laws of France, and if that is proved they cannot claim protection from a foreign principal; they are personal offenders liable to the justice of the country.

The President waits until the murmurs subside. He demands in official tones whether the *partie*, the complainant, is in court. There is a breathless silence. Lady Bulwer's name is called by the usher. All eyes are turned towards the door as the heroine of the drama enters accompanied by her friend, Mrs. Trollope. Two chairs are placed for the ladies near the box of the King's Advocate. They cross the stage. Lady Bulwer is evidently moved by strange agitation. The ladies in the audience whisper that she is *élégante*, and the gentlemen gaze at the beautiful lady with manifest satisfaction. She takes her seat and answers the official questions in a low voice. Her name, her residence, and—alas, that officialism should overpower national politeness—she is even asked her age, and bravely

comes within a year or two of accuracy with the figure 35.

A great English judge once pointed out that by our law of evidence no man should be permitted to state his age, since "although it was certain that he was present at his birth, yet it is scarcely probable that he would have noted the date, and therefore his testimony on the subject is really hearsay." But in France hearsay is as good as any other evidence and to the indignation of the fashionable ladies in the court the question is put and answered.

And now the husband's letter is read. He refuses his wife permission to proceed. He is allowed to assert that he is persuaded the whole business is a put-up job (*arrangé*), managed by her ladyship for the sole purpose of provoking scandal and bringing her alleged wrongs to public notice. It is a clever letter ending with a familiar sentimental tag about the "honour of the family and the welfare of his dear children," written for a French audience in the best flamboyant Bulwig style. Trust your literary man to touch the right note.

A buzz of discussion hums through the court and then a silence. Such a silence as only inspired artists can command. For the great Antoine Pierre Berryer has risen. The advocate of brilliant imagination and splendid eloquence. The man from whose lips come pearls of wisdom, illumined by the light of passion, deftly strung together upon a golden thread of law. His commanding figure dominates the court. His remarkable head and noble expression gives added power to the beauty and sanity of each deliberate phrase. His searching and expressive eyes seem to read the unspoken thoughts of the judges. His ease and grace of action chain their attention, whilst his voice, rich,

round and melodious, vibrates on the strings of their hearts.

With such an advocate and so clear a cause of right, failure seemed impossible.

It is a melancholy thing that the triumphs of advocacy, oratory and acting come down to a new generation in the unconvincing form of description and portraiture. Those who were privileged to hear the great Berryer in court speak of him as one of the great masters of advocacy. This speech of his, as we read it in contemporary reports, is a model of clear learning and concise statement. He tells the story of the lady's wrongs, considers the laws of England and of France, and having made every point in his client's favour enforces them in an eloquent peroration.

Every mind is bent and swayed by his words as he comes to the conclusion of the matter. "You have before you," he reminds the judges, glancing at the bowed figure of his client, "a woman and a foreigner. There may be many foreigners whose wives may come to reside in France under the obligation of respecting the police laws of the country but are also entitled to their protection. In a case of injury, and for the reparation of their honour, must it be necessary to go to the heart of India perhaps to obtain the authorisation of a husband? No, a thousand times, no! The foreign woman living honourably in France, with the consent of her husband, and who has to complain of an offence against her person—who has been insulted, menaced and attacked, must surely be entitled to the protection of the laws of the country in which she has fixed her residence."

There is a murmur of approval at so sound a sentiment, but it silences itself. The advocate

raises his hands and in a voice of pity calls out : " If I were in England I would say to the tribunal, in the name of the Queen of the three kingdoms, I plead for a woman whose husband has refused her his authority to demand justice, and I would ask for that woman the reparation which the law was bound to grant her ! " and then, in an indignant outburst, he concludes : " It is said that we seek for scandal. Scandal indeed ! The scandal is in the protection which is given to the guilty. "

Who that heard this could doubt that the law has its moments of great drama ? And of a surety, if eloquence that drew tears of indignation into the eyes of the audience could have dissolved the unjust laws of the age, M. Berryer would that day have won a great victory for the cause of woman's freedom. But the audience were neither the judges nor the jury. M. Barrot has his dry-as-dust precedent to quote, old Ternaux, the Procureur, sits nodding in his box and has his say later on about the rulings of the Court of Cassation in 1807, and then, alas, the silver-tongued Berryer has, it turns out, no right of reply.

There is a wave of depression over the court when the tribunal returns and the President reads the dreary record of the findings. In a word they have decided in favour of "*non recevoir*" or, as I think we should say, "*non suit*." The court will not hear the case. If wrong has been done it cannot be righted, for the human being is but a married woman and the common rights of a citizen are not hers.

Alas, poor Rosina, many other disappointments were to add to her sorrows, but she lived on until March, 1882, when she died in her eightieth year. After life's fitful fever she sleeps in the churchyard

of Shirley, in Surrey. Had she heard, I wonder, ere she passed over, that in that very year of 1882 Parliament had heard of her grievances and of those of other thousands of wronged women and were enacting in their quaint Norman phrases that a married woman could bring actions "in all respects as if she were a *feme sole*," which is law jargon for a spinster.

It is comforting to know that there is no injustice be it ever so ancient, widespread and long-continued that may not in the course of eternity find a Parliamentary doom.

### 3. THE ABDUCTION OF MISTRESS PLEASANT RAWLINS

I have very little doubt that Haagen Swenden was an adventurer and that Mistress Sarah Baynton was not his sister but was a woman of bad character ; nevertheless, I agree with Mr. Johnson, one of the members of the jury, that it was by no means conclusively proved that Swenden did not captivate the foolish fancy of Miss Pleasant and that there was some reason for believing that she was not unwilling to marry him.

Pleasant Rawlins was the daughter of the late Mr. William Rawlins, who left her a considerable estate, about £2000 in money and £20 a year in land. She lived with her guardian's sister, Mrs. Sabina Busby, and in 1702 they had been lodging at the widow Nightingale's, near Tuttlefields (Tothill Fields) for some three years. Pleasant was now eighteen years old, and if she had not been an heiress no one would have troubled about her running away and marrying the dashing Haagen, but as Mr. Justice Powel, with legitimate patriotic pride, reminded the unwary foreigner : "Your offence hath been in a nation



where property is better preserved than in any other Government in the world." In those days to carry off and ruin a girl of eighteen was naught, but to marry an heiress might be felony punishable by death if the prosecution could satisfy the jury that the young woman was not a willing victim. Property was sacred, but the young person was a secondary consideration.

Reading between the lines of the reported evidence one may fancy that Miss Pleasant had not a very gay time of it at Tuttlefields. The constant companionship of Mrs. Sabina Busby doubtless left something to be desired. At the same time it would have been wiser, no doubt, had she patiently submitted to her fate and waited until such time as the Busbys provided her with some eligible and respectable young relative of their own to reduce into possession the heiress and her property. An heiress, like royalty, must love wisely rather than too well.

The widow Nightingale was a most particular lady, and it was not until she had received the assurances of several neighbours that Mrs. Baynton "came of a good family," and had come to town from Wiltshire to attend a lawsuit, that she consented to take her as a boarder at the very reasonable rate of 12s. for herself and 10s. for her maid. Mrs. Busby and Pleasant seem to have taken a fancy to Mrs. Baynton very rapidly, and a few days after her arrival she was visited by her brother, Haagen Swenden, and two ladies, who were entertained with wine and coffee and cribbage.

Miss Pleasant Rawlins began to enjoy herself. Haagen was a traveller and had been to sea, and had strange tales to tell of the disastrous chances he had suffered. Miss Pleasant had never met anything so

dashing as Swenden in Tuttlefields society. He was interested in Norway shipping and invited the ladies on shipboard. It was a delightful and exciting entertainment. Even the grave Sabina was fascinated by the fellow and discerned in him a likeness to the dear departed Busby, at which Miss Pleasant was scornful and amused.

Mrs. Busby certainly invited him to the house to mix a bowl of punch for dinner. It is true that the young lady denied at the trial the details of courtship to which the ungallant wretch in the dock would have had her confess. But her answers were coy and unconvincing as "I know not of any such thing," or "I don't remember any such thing." She admitted, however, that when Swenden appeared on the scene a former lover, named Pugh, was sent about his business.

Things were going very well as it seemed with Haagen and Pleasant, and I make little doubt that the rascal would have persuaded the foolish girl to run off with him if time had been given him, but unluckily widow Nightingale heard rumours that Mrs. Baynton was not all she ought to be. The truth was that Mrs. Baynton was nearly everything she ought not to be. She was not Haagen's sister; it is doubtful if there was ever a genuine Mr. Baynton, and she was ultimately saved from the gallows by a jury of matrons. Widow Nightingale made up her mind to give her notice, and Mrs. Baynton, fearing this, quieted all suspicions by informing her that her business in London was over and that she was leaving at the month-end.

It was then that Swenden and she devised as scandalous a plot as can well be imagined. At the end of the trial the man, to save Mrs. Baynton, took upon himself the whole blame of the matter and

asserted that she was not the contriver, but without the woman the wicked business could never have been carried out. Two bailiffs, named Hartwell and Spurr, were hired to enact minor parts in the conspiracy, a licence was obtained, and a parson, whose name is omitted from the report, was told to be in readiness. Then a writ was issued to arrest Miss Pleasant Rawlins for an imaginary debt of £200.

On Friday morning Mrs. Baynton, who knew that Mrs. Busby and Pleasant went every week to Oxenden Chapel on that day, came and told them she had occasion to go to Golden Square and wanted them to drive down with her, as they had done on former occasions. When they came to Dartmouth Street, where Mrs. Busby expected to get out, the fellow Hartwell jumped into the coach. Mrs. Baynton called to the coachman to drive on. Hartwell put his arms around Miss Rawlins and explained that he had a warrant of arrest for her and Mrs. Busby. The two women seemed very frightened; Mrs. Busby was undoubtedly in great terror, but Miss Rawlins took matters more calmly. They were driven to the Star and Garter at Drury Lane, where were two other bailiffs, Wakeman and Spurr, who had followed the coach. Mrs. Baynton hurried off to get help, as she told them, and Hartwell carried off Pleasant Rawlins, leaving Mrs. Busby in charge of Spurr.

Hartwell carried off the girl by a back door and brought her to his own house, threatening to lock her up in Newgate if she did not get bail. Whilst she was there kind Mrs. Baynton appears quite promiscuous-like. She is most desirous to help her to find bail, and in a moment of inspiration sends for her brother Haagen. He makes a jest of the girl's fright and arrest and tells her in fun that he had a

good mind to arrest her himself. With that he and she and Mrs. Baynton peaceably go forth in a coach to the Vine Tavern in Holborn. What happened afterwards is not greatly in dispute, though how far the young lady was a consenting party to all that occurred seems doubtful.

They appear to have had a dinner at the Vine of a roast fowl, and after dinner Mrs. Baynton begins to try to persuade Miss Pleasant to marry Swenden, the suggestion being that if she does not she will be carried off to Newgate. A ring is obtained, a parson arrives and the marriage takes place in the parlour of the Vine. The landlady, the servants and the parson and his clerk did not perceive any discontent or distress about the young woman. After the marriage they went back to a Mrs. Blake's house, where they retired to bed and afterwards had supper.

That evening they are disturbed by Mr. Bennett, a constable who has traced the couple to Blake's, and arrives with some of Miss Rawlins' relations, and requests them to come before a magistrate. Miss Rawlins, hearing the noise, comes out of her room and tells her cousin that she has married Swenden of her own free consent, and displays her wedding ring with not unnatural pride. As the constable has no warrant the party crack a flask or two of wine with the bridegroom and go their way. Swenden, however, is uneasy about it and takes his wife across to Mr. Baber's house in York Buildings, where he is eager that she should take a voluntary oath that she was married by her own consent. Baber, however, was very loth to meddle with the matter, as the young lady appeared in very great disorder and in a very confused condition.

They appear to have spent the night at Blake's

house, and on the next morning Swenden goes to his barber's with his wife, and this witness testifies to her apparent pleasure and satisfaction with her husband, as do several of Blake's friends, no very reputable persons certainly, but their evidence bears out that of the parson that however foolish and frightened she may have been she was not wholly averse to the proceedings, to which she was an apparently consenting party.

By seven o'clock on this evening a constable arrives at Blake's house, armed on this occasion with a warrant to arrest Swenden and all his associates who had helped him to carry off the heiress. With the constable is a friend of Miss Rawlins. This gentleman asks her: "Are you married?"

She replies: "Yes, there is my husband."

The constable says that she seemed very pleased about it, and showed them her ring. She herself, in giving evidence of this occasion, does not deny that she may have said to the constable: "I am very well content with the marriage and this is the ring that married us." They are now carried before the Recorder. At first Miss Rawlins asserts that she was married to Swenden without force or compulsion. She was then holding her husband's hand. The Recorder shakes his head and says, "he is afraid she was drawn in by this man, who he feared was a spark and bully of the town." Swenden was withdrawn, and after that Pleasant Rawlins seems to have changed her mind and asserted to her guardian that everything that had happened to her had been the result of threats and force.

The suggestion of the Recorder that Swenden was a mere town bully was not borne out by the evidence. He was able to call respectable witnesses who had traded with him and found him "a very honest and

ingenious man." One trader had consigned goods to him when he was in Norway to the amount of £3000 and better, and others spoke of him as a man of good repute and credit in commercial circles in Norway. They testified that they had had large transactions with him and found him just and fair in his dealings.

It would have been interesting to have heard Swenden's own account of the plot. That it was a plot, and a very dastardly one, there is no doubt. That Swenden had arranged the whole thing with intent to trap the girl into marrying him is beyond all question, and the very fact that he found it necessary to make this show of force goes to prove that he had not won her affections sufficiently to be sure of her consenting to run away with him. His conduct was wicked enough, but the evidence certainly did not go to the length of proving that the young woman was not a consenting party to the marriage.

But as to that, Lord Chief Justice Holt told the jury very plainly: "You are to know that if she be taken away by force, and afterwards married, though by her consent, yet is he guilty of felony." And if this was good law, and there was in those days no counsel to argue the point for the prisoner and no Court of Criminal Appeal to criticise it, then there is no doubt whatever that Haagen Swenden was guilty under the statute of Henry VII of taking away an heiress contrary to her will and afterwards marrying her.

Both Swenden and Mrs. Baynton were found guilty of felony, and Hartwell and Spurr, the bailiffs, were congratulated by the judges on a merciful jury and a lucky escape from the gallows. Mr. Justice Powel, in his speech to the delinquents, is inclined



to sympathise with Swenden, whom he regards as a man of good means and position brought low by his association with Sarah Baynton, "such a woman," he says, "as will make a rich merchant quickly poor and will soon reduce a wealthy man to a morsel of bread." So he states the matter over again in full detail to the wretches in the dock that they may be satisfied that they "can expect no other than an award of the punishment the Law requires, that is—Death."

Mrs. Baynton remained in jail until her child was born, when she was reprieved. As for Pleasant Rawlins, let us hope she found some less adventurous husband satisfactory to herself and her relations. Haagen Swenden in his dying speech made a reference to her that seems to me shrewd and kindly. "As for my wife," he says, "I am so much in charity with her that I cannot believe the severity extended to me did altogether proceed from herself." His summing up of his own fate is business-like and accurate. "As for myself," he says, "I am now a-going to suffer an ignominious death for a crime which my own conscience doth not accuse me of, but the rigour of the law hath made it my unpardonable crime."

I close the pages of poor Swenden's trial with a sad doubt. Had we then?—have we even yet?—a legal machine capable of realising our high ideal, the discovery of "the truth, the whole truth and nothing but the truth"?

## CHAPTER FOUR

### CONCERNING THE ETERNAL TRIANGLE

1. CATHERINE OGILVIE.
2. THE MAYBRICK CASE.
3. THE THAW CASE

SCHOLARS and scientists will talk to you very learnedly about the eternity of triangles. Pythagoras and Archimedes knew all about it, they say. "The triangle is the last sub-division of a continuously sub-divided polygon." You take the idea? To put it another way, one may "sub-divide the triangle by drawing a line from any angle to the opposite side, the result will be two triangles," and so on to eternity\*.

That is the geometrical view of the matter, but then there is the folk-lore man who will have it that the idea of the eternal triangle dates back to the mystical Egyptian reverence for their Trinity, Isis, Osiris and Horus, and they remind you that Xenocrates wrote of the triangle as an eternal symbol of divinity and that it is so used.

Others, again, refer you to Solomon's seal, with its interlaced triangles, symbolic of the mystic union of body and soul, and it is when you read of these sacred origins of the eternal triangle that you wonder the more at the sublime impudence of that unknown young lion of Fleet Street who took it into his head to shoot the phrase into the heart of the vocabulary of theatrical slang.

Who first, in English writing, used the words "the eternal triangle" to fit the story of two men and a woman, or two women and a man, I have failed to discover. Yet the phrase caught on in journalism towards the end of the last century, and seems to have come to stay. It is an apt form of words, and the triangle described is certainly as eternal as any worldly triangle can be, since it is as old as the Garden of Eden. In that eligible but somewhat dull demesne you find two straight lives living together lovingly in an earthly paradise until there enters furtively to the wife, whose time lies idle on her hands, a *tertium quid*, disguised in a gaudy snake-skin, whom we recognise at once as a satanic villain bent on the woman's destruction.

Two lives can, it appears, even in a garden with no gardening to do and with no house or household tasks to worry about, manage to live in dull respectable ease. But three lives apparently can never be satisfied with mere common law straightness, but an endeavour to enclose forbidden spaces must join together in a medley of angular and triangular adventures of a risky and exciting character destructive of their own happiness, but giving intense delight to those who read their story.

Give your romancer two men and a woman, or two women and a man, and if he has any craft in him he will straightway weave you an adventure of love, folly and crime that will keep you awake turning the midnight volts and amperes. The miracle cannot be achieved with two puppets—at least not by modern writers—there must be the mystic number of three. The common citizen is satisfied to say that there are two sides to every question. The troubadour knows that there are three. It is the perfect number expressing the

beginning, middle and end, the three acts of the drama, during which each side of the triangle is displayed with such convincing skill that whilst the master playwright is exhibiting his figures on the stage he convinces his audience that each side of his triangle is at the moment greater and better than the other two. Which is absurd.

## I. CATHERINE OGILVIE

If, as many believed, Catherine Ogilvie was wholly innocent of the crime of poisoning her husband, she was indeed a much-wronged woman. The case created widespread excitement, both in England and Scotland. Sides were taken, pamphlets were written and the conduct of the case was seriously impugned by legal critics.

Catherine's romance can to some extent be reconstructed. Far north of Perth, in the remote hill country of Glen Isla, which lies between Alyth and Braemar, there lived one Thomas Ogilvie, a middle-aged yeoman of forty, on his small estate, called Eastmiln. He was a man who suffered from ill-health and does not seem to have had either personal attractions or wealth.

To the surprise of the countryside this confirmed bachelor, in January, 1765, married a young and beautiful girl of nineteen, Catherine, daughter of the late Sir Thomas Nairne, of Dunsinane, Baronet, and carried her off to his lonely hill-side farm. Her relations were indignant at the match, and there seems no doubt that she married him against their will, out of sincere love and affection.

The household of Thomas Ogilvie, or "Eastmiln," as he was called by the neighbours, consisted of his mother, an old and infirm lady, and a woman called Anne Clark. This woman is said to have been a former mistress of the youngest brother,

Alexander Ogilvie. She was a very important witness at the trial, and the theory of the defence was that Thomas having died a natural death her evidence was prompted by a desire to destroy Catherine and thereby assist Alexander to obtain the Eastmiln property. Old Lady Eastmiln disliked and distrusted her daughter-in-law from the first, and in this enmity had an active ally in Anne Clark.

Within a month or two of the marriage, in the spring or early summer, there arrived as a visitor to Eastmiln the second brother, Lieutenant Patrick Ogilvie, of the 8th Regiment of Foot, on leave from the East Indies. From this moment there seems to have commenced one of those triangular dramas of waning love and duty that in real life seldom attain to a happy curtain. Patrick loves his young and beautiful sister-in-law; she, I fear, returns his love but too ardently. The husband is indignant, quarrelsome and sulky. The old lady and Anne Clark look on with grim hatred and satisfaction, pouring oil on the troubled fire. After weeks of misery and provocation Thomas turns his brother out of the house. He leaves on May 23rd, and on June 6th the laird of Eastmiln is dead.

From the first the wretched girl is accused by Anne Clark of having poisoned her husband. The story spreads through the countryside. All the friends and relations of the deceased have no doubt that Thomas Ogilvie was poisoned by his wife, and that Patrick Ogilvie, his brother, was, in the old law phrase, "actor, art and part" in the murder. The two are arrested and put upon their trial for incest and murder. John Hill Burton, the Scots historian, and other critics of the verdict of the jury considered the result of the trial was "a reproach on the jurisprudential science of Scotland." They

claimed that there was no evidence that poison existed or was in the house or that the deceased died of it. Let us consider this matter.

Now the two main themes to which the Crown directed their evidence were motive and opportunity. It is impossible to shut one's eyes to the overwhelming evidence of motive. Within a few months of marriage the deceased husband had openly charged his young wife with carrying on a criminal intrigue with young Patrick and had turned his brother out of the house. The evidence of their familiarity was but too convincing. Apart from the testimony of Anne Clark, which was very hostile to the prisoners, servants described scenes in the house during the husband's temporary absence, and neighbours spoke to meeting the couple in the country walking and acting as careless foolish lovers. The evidence would have been more than sufficient to satisfy the most lenient divorce court.

But whatever had actually happened the husband had certainly believed her guilty, and had insulted her by declaring that "she and the lieutenant were as common as the bell that rings on Sabbath." The wife declared her innocence and expressed fierce indignation at Patrick's dismissal, and continued to correspond with him. Now if Patrick, when he left Eastmiln, had gone away to Edinburgh it may be that no tragedy would have happened, but he merely withdrew to the little town of Brechin, within twenty or thirty miles of his brother's house. And here, like Romeo, but it is to be feared from different motives, he sought an apothecary, and much turns upon what view you take of this witness's evidence. The apothecary, or surgeon, was named James Carnegie, and some day at the end of May, Patrick sent for him to a tavern and asked him for



some laudanum for the gripes, and told him he wanted to buy some arsenic in order to destroy some dogs which spoiled the game. Carnegie returned to his surgery, found that he had some of both of these substances, and the next day went and dined at the tavern with Lieutenant Ogilvie and a friend, Lieutenant Campbell. Ogilvie took him apart into another room and received the drugs and paid a shilling for them. Carnegie said that he usually took a receipt for arsenic, but he did not press for it from a gentleman in Ogilvie's position.

Ogilvie, in his written declaration when arrested, admitted having been in company with Carnegie at Brechin, but he denied having received from him any laudanum or arsenic. He also sent a man named Dickson to see the surgeon, and, when he heard what Carnegie was going to say, wanted to alter his declaration, but the Scots law did not admit that, though he might have added to it if he had wished. He wanted then to admit a purchase of laudanum at a date after his brother's death.

A strong effort was made in Carnegie's cross-examination to show that what he had sold was not arsenic. The surgeon himself knew nothing about the powder he had sold. All he could say was that he bought it as arsenic from a Dundee druggist, it was sent to him in a package marked arsenic, he had sold it to people in the neighbourhood to kill rats, and they told him that it did kill rats. This evidence could easily have been strengthened by production and analysis of the rest of the package at the surgery. Those who contended for the prisoners' innocence laid great stress on the point that there was no real proof that they ever had any arsenic. But at least Patrick bought a white powder called arsenic which killed rats. What became of it?

Andrew Stewart, brother-in-law of deceased, was called and proved that Patrick came to him at his house at Alyth, where he received a letter from Catherine, wrote a reply and gave him a phial which he told him contained laudanum and a small paper packet which he said contained salts. These he desired him to give privately into Mrs. Ogilvie's own hand. When Stewart came to Eastmiln on the Wednesday afternoon before Thomas Ogilvie's death, he was first taken into old Lady Eastmiln's room. Presently young Mrs. Ogilvie and Anne Clark came in, and the former took him apart into the Easter Room, where he gave her the phial and the packet and a letter from the lieutenant.

Before Stewart left, the old mother and Anne Clark pressed him to tell them what he had brought with him, and he informed them in detail. Thereupon Miss Clark declared she was afraid that Mrs. Ogilvie would poison her husband, and both women warned Eastmiln not to take anything out of his wife's hands except at table.

Mrs. Ogilvie herself admitted receiving from Stewart a small phial of laudanum and a letter of directions about taking the salts. These things she said she had asked Patrick to send her when he left the house, and she required the laudanum for sleeplessness.

On the day when the package arrived Eastmiln had a serious quarrel with his wife. She was openly making some cambric ruffles for her absent brother-in-law from material which she said Patrick had left behind. That very morning a chapman had called and had been dunning old Eastmiln for payment for this very cambric which his wife had bought without her husband's consent. The laird was furiously angry and after upbraiding his wife went away in a

ulky humour to spend the day with his tenants on the other side of the hills. He returned in the evening still sulking and went to bed without supper. The next morning at breakfast Andrew Stewart saw Catherine carry away a bowl of tea to her husband, who remained in bed. A servant saw her on her way to the bedroom take it into her closet, where she was stirring it. Andrew Stewart, however, left the house without any suspicion of foul play and rather indignant at the time at the suggestion made by the old lady against her daughter-in-law.

That morning Eastmiln was taken ill in the stable. He complained of a burning sensation and thirst, drank much water and vomited painfully. He suffered great pain in the calves of his legs and moved his limbs as if in pain. Anne Clark's account of his symptoms is consistent with arsenic poisoning. The wretched man in his death-agony is deposed to have said to a servant that he was poisoned and that woman had done it." When another servant brought him some water in the bowl from which he had taken tea, he cried out, "Damn that bowl, for I have got my death in it already." Stewart, who had not left when he was taken ill, proposed sending for a doctor, but Mrs. Ogilvie would not agree, saying hopefully that he would soon be better. A surgeon was sent for later, but when he arrived the wretched man was dead. Lieutenant Ogilvie arrived at the house soon after his brother's death, and Anne Clark declares that when he was charged with sending poison to Mrs. Ogilvie he replied hastily "that he did not think she would have the heart to use it," but Stewart says that when he advised him to make his escape he said "that God and his own conscience knew that he was innocent."

Mrs. Ogilvie's conduct after the matter came into the hands of the Sheriff was not calculated to assist her defenders. She had made the most compromising statements to the doctor and the servants after her husband's death and refused to reply to the Sheriff's question or produce Patrick's letter or the parcel of salts. No medical examination was made of the body, and perhaps in far Forfarshire there were not men of sufficient scientific attainments to make a proper post-mortem. But the absence of this and other testimony that might have been put forward did not prevent the jury from acting on the strong circumstantial chain of evidence with which the prisoners had entangled themselves.

Both are found guilty of incest and murder at Edinburgh, on August 13th, and Patrick is sentenced to be fed on bread and water until the day of execution, when he is to be hanged on a gibbet in the Grass Market and his body given to Dr. Munro, Professor of Anatomy. All this is duly carried out, Patrick protesting his innocence to the last.

On arrest of judgment Catherine is remitted to the Tolbooth to await the birth of her child in March next. Early in March a little girl arrives. The Court of Justiciary hearing of the event, with business promptitude sets down Catherine's case for Monday, March 17th, to sentence her to execution. But the grim judges were baulked of their prey. On Saturday Catherine disappears. She departs south in a post-chaise with a gentleman companion. She is disguised as a young officer wearing "a hat slouched in the cocks with a cockade in it." She passes through Haddington that afternoon and pushes on with four horses day and night for London.

The holy Scots Sabbath makes immediate pursuit impossible. On Monday proclamations are made and rewards offered. The chase begins. At times it is a close and exciting affair. She is tracked to Dover, doubles back to London and hires a Gravesend tilt boat there to carry her to Calais. Then she drives down to Billingsgate in a Hackney coach to meet the tilt boat, floats along the pleasant Thames out to sea, lands safely at Calais, and the world knows no more of her. How was it done? What became of the infant child born in the Tolbooth? Did Catherine live happily ever afterwards? These things are lost in the mists of time.

## 2. THE MAYBRICK CASE

The basis of this trial is the eternal triangle of modern West End drama. Whether a murder was ever committed who knows? But the tragedy that slowly develops with Elizabethan horror and intensity is to watch the hand of fate slowly drawing the beautiful Magdalen into the lonely and deserted dock, and then to picture her sitting in the condemned cell listening to the rappings of the hammers as the scaffold builders finish their work in the prison yard.

From a lawyer's point of view one must honestly class the trial among miscarriages of justice. A combination of unsuitable legal machinery, human shortcomings in the working of it, a series of strange accidents and a natural social prejudice against the prisoner's general conduct, resulted in a failure of that certainty necessary to the conviction of a citizen accused of crime.

The drama of the trial divides itself naturally into two acts, the first telling the story of the crime, if crime there was, and the way in which the law

handled the investigation of it; the second investigating the investigation, as it were, and putting the law upon its trial by holding an inquest on the proceedings in the interests of justice and truth.

Mr. James Maybrick was a Liverpool cotton merchant and had lived for a considerable time in Norfolk, Virginia. Florence Chandler, who married him, was the daughter of a banker of Mobile. They met on an Atlantic steamer and were married in 1881, the husband being forty-two and the wife eighteen. In 1884 they settled in Liverpool. There were two children of the marriage, a boy and girl, who were seven and three years of age in 1889, when the drama opens.

The Maybricks lived in some luxury. They had a villa and four servants at Aigburth. Maybrick kept a saddle-horse, and they attended race meetings and went to balls and entertainments, after the fashion of well-to-do people. But, in fact, Maybrick's business was not flourishing; he had cut down his wife's allowance, and as the household expenses were not curtailed she had run into debt.

Two things caused his wife anxiety and trouble. She had discovered that her husband was unfaithful to her, and she had learned that he was in the habit of taking poisonous drugs. She had spoken of this habit to his doctor and to one of his brothers. She does not seem to have known that he took arsenic, but imagined that he indulged in strychnine. As a matter of fact, Maybrick was a confirmed drug taker. He had commenced taking arsenic in America, possibly to ward off malaria, but he had continued to take both arsenic and strychnine as a pick-me-up, and like most confirmed drug takers concealed it from his family and his physician, though he spoke of it to his friends. This aspect of the case was



ever fully explained at the trial, nor was sufficient weight given to the matter by the judge.

In opening the case to the jury, Mr. Addison said that it was clear that the deceased had not administered the arsenic to himself. Had he known all we know to-day he would never have hazarded such a remark, for Addison was a scrupulously fair prosecutor.

In June, 1888, Maybrick began worrying about his health. He consulted several physicians, and in April, 1889, went up to see a London expert named Dr. Fuller. This gentleman described him as a strong healthy man on April 19th, but he heard and knew nothing of his drug-taking habits which the patient concealed from him. The case for the prosecution, however, was that Maybrick was in excellent health until April 27th, and that between that date and May 11th he was poisoned.

It is necessary, I fear, to consider shortly the most painful part of the story, the alleged motive for the crime. It appears that Mrs. Maybrick had a lover named Brierley. On March 21st she had stayed with him for two nights at a London hotel. On March 29th, at the Grand National, she had offended her husband by accepting Brierley's attentions. On their return home there was a violent quarrel. The husband struck his wife. The wife ordered a cab and was eager to leave the house. There was talk of a separation, but the family doctor came to the rescue. There was a reconciliation. Bygones were to be bygones. Maybrick agreed to pay his wife's debts. Unfortunately, although Brierley seemed ready to drop the intrigue, Mrs. Maybrick was less willing to give up her lover. This was the situation in April of 1889.

Maybrick came back from London, after seeing

Dr. Fuller, on April 22nd. Fuller's prescription was made up in Liverpool, but a bottle of medicine came down for him by post. The next day Mrs. Maybrick bought a dozen fly-papers, and on the 25th two dozen more from another chemist. These sheets were openly soaked in a basin of water, and her story was that she used the arsenic from them for a cosmetic. On Saturday, April 27th, Maybrick was taken ill and had an attack of vomiting, which he himself attributed to an overdose of strychnine contained in the London medicine. That day he went to Wirral races and got very wet. He dined with some friends and felt very ill at dinner. On Sunday he was worse and Dr. Humphreys was called in. In the middle of the week he got better and went down to the office. He took his lunch with him and complained of sickness at the office. His doctor gave him morphia and Valentine's meat juice. This made him ill, so the doctor prescribed Fowler's solution of arsenic. On Tuesday, May 7th, another doctor was called in at Mrs. Maybrick's suggestion, and she telegraphed for a nurse. On Wednesday morning Dr. Humphreys thought his patient was better.

Now that morning Alice Yapp, the nurse, informed Mrs. Briggs, a friend of Mrs. Maybrick, that she had seen the fly-papers soaking in the basin, and Mrs. Briggs had telegraphed to Michael Maybrick, a brother, to come at once, and told Edwin, another brother who was living in the house, what was said. At 5.30 that afternoon Mrs. Maybrick gave Alice Yapp a letter to post to her lover, Brierley. The girl opened the letter and took it to Edwin Maybrick. In it Florence Maybrick had written: "Since my return I have been nursing Maybrick night and day. *He is sick unto death.*"

This unhappy phrase had probably more to do with the jury's verdict than all the scientific evidence put before them. That a wife could leave her husband's bedside to write a letter to her lover, taking satisfaction at his being "sick unto death" when the doctors had hopes of his recovery, was indeed a horrible state of affairs. But here the restraining hand of justice should have striven to hold the minds of the jury to the main issues. Did the deceased die of arsenic poisoning? Did the prisoner administer it? Until these questions were answered the question of motive, to which this letter alone was irrelevant, did not really arise. Unless a person is proved to be poisoned, the fact that someone had a possible motive or desire to poison him can have nothing whatever to do with the case.

Now although the nurses were warned that Mrs. Maybrick was not to give the patient anything, and the doctors knew of her letter, she continued to come in and out of the sick-room, and nothing was said to her directly about what had been discovered. Nevertheless, she seems to have known of their suspicions and said to Yapp, the nurse: "Do you know that I am blamed for this?" One would have thought that under these circumstances a guilty woman would have hastened to destroy any evidence of guilt, and knowing that she was under suspicion would have been careful to keep away from the patient and leave him in the hands of the doctors and the nurses.

It is also open to doubt whether a guilty woman would, as Mrs. Maybrick did, have elected to make a statement in court. In those days a prisoner could not give evidence, but was allowed to make a statement from the dock, by permission of the judge. Mr. Justice Stephen gave this permission on the

terms that she might not consult her counsel about the form of it, that she might not write it down but might assist her memory with notes. It was obviously a very risky proposition to allow a woman so situated to say a lot of things that might or might not help her case but which were sure to be pitilessly criticised and pulled to pieces by the judge and the counsel for the Crown. Nothing she could say, short of giving evidence of the whole story of her life with her husband, could have in any way assisted her, and the statement when it came was a disaster. At the police court Mr. Pickford, who then defended her, had very wisely not allowed his client to make any statement, and had reserved his defence. Sir Charles Russell should have followed his example and taken the responsibility of forbidding any statement whatever. But he was in a great dilemma. His client strongly desired to speak, and he let her have her own way.

Up to this stage of the trial there were two points in her favour. There was strong evidence that Maybrick had not died of arsenic poisoning at all; there was no direct evidence that his wife had administered poison to him. In the statement, after telling the court about her cosmetic preparations from the fly-papers, which really carried things no further, she continued with a detailed story of how on the night of Thursday, May 9th, her husband had begged her to give him some of the powder he was used to take, and to put it in his food, and that she had found the powder for him and put it into the meat juice.

The statement availed nothing. It was conclusively proved that the deceased never tasted that particular meat juice, but it was removed from the room and tested and arsenic found in it. But from

the jury's point of view the prisoner had now made a direct self-incriminating admission that at least on one occasion she had been tampering behind the backs of nurses and doctors and brought arsenic into the sick man's room and put it into his food. True, she said it was done at her husband's request ; but, even if this was true, how unlikely that the jury would believe it. Russell practically ignored the statement, but the prosecution and the judge criticised it pitilessly.

It took the judge two days to sum up the case, and he left it in the jury's hands with no parting warning of the very grave doubt that really existed in the minds of all reasonable men whether Maybrick ever died of arsenic poisoning at all. The jury at the last never gave any real consideration to the scientific points of the case, and maybe did not really comprehend them. They were absent for thirty-five minutes. Their minds must have been made up already. The prisoner maintained her innocence to the last, and the judge, expressing no satisfaction with the verdict he had contributed to bring about, passed sentence of death in the usual form.

But would the verdict and sentence have stood in a Court of Appeal? As to that it is very hard to express a decided view. I do not think I am putting it too high if I say that at the time the verdict was pronounced the better legal opinion held that Mrs. Maybrick was not rightly convicted. There was also a strong scientific and medical opinion that Maybrick did not, in fact, die of arsenic poisoning. Indeed, the action of the Home Office in refusing to hang their prisoner was based upon the doubt whether any murder had been actually committed.

There was no Court of Criminal Appeal in those days, and the unsatisfactory nature of this trial did

much to impress popular and official opinion with the necessity for such an institution. Assuming that there could have been an appeal by Mrs. Maybrick, it is more than probable that the court would have set aside the verdict against her. It is at all events an interesting speculation to consider how the case could have been put before such a court.

One point would certainly have been put forward. The trial took place before a jury of farmers and small tradesmen from the neighbourhood of Liverpool. It is a curious trait in our constitution that where large sums of money are at stake or difficult considerations are involved the parties may have a special jury. This is not allowed to a prisoner, however complicated his case may be. The minds of Mrs. Maybrick's jury were probably ill-fitted to comprehend the scientific evidence or to grasp the delicate issues that were entrusted to them, and they must have received impressions from the gossip of the neighbourhood which it would be difficult for them to set aside. These things in themselves the Court of Appeal could not have dealt with. But it appears that during the trial the jury were allowed to mix with the public in the billiards-room of the hotel where they stayed. In the peculiar circumstances of this case a Court of Appeal, if convinced that the jury during the trial were not isolated from the contagion of public opinion, might have taken the sensible view that their verdict was on that ground alone tainted and untrustworthy.

In no case was it more vital that a jury should be really impressed with their sense of duty to find a verdict on the evidence and the evidence alone, and it would have been the duty of the prisoner's counsel to show that the judge's summing up did not put the case adequately before the jury. We know now



that unfortunately the great judge who tried the case was suffering from an insidious illness and that his keen analytical mind and powerful judgment were impaired. The world was shocked by an unhappy remark made by the judge when he was asked to fix a day for a case that was to follow Mrs. Maybrick's trial, and he interrupted counsel by saying: "But Sir Charles Russell may plead guilty."

Mr. H. B. Irving, in his essay on the trial, attributes this lapse to "grim humour," such as his hero, Jeffreys, might have indulged in on the Bloody Assize. I cannot accept the suggestion. Mr. Justice Stephen was not a humorist, nor was he a callous and unkindly human being. I have no doubt whatever that the words were uttered aimlessly, the offspring of a mind not wholly under control. Any other explanation is unthinkable. The lawyers who heard them were saddened and aghast. But what effect would they have on the plumbers and grocers who were summoned on the jury when they read them in their evening paper and discussed the meaning of them in the bar parlour?

It has always seemed to me a pity that on the first day of the summing up Sir Charles Russell was absent the whole day engaged in the Civil Court in an important railway case. It may be said that he could have done nothing to help his client, but it offends my sense of the theatre that an advocate should leave the stage when his presence, though he has merely a listening part, must have such a strong effect on the human audience in the jury-box.

The real issue of this case was whether or no James Maybrick had died of arsenic poisoning. Until the jury were convinced of that fact all questions of motive, immoral conduct, opportunities of administering poison and similar questions are

of no account at all. If the judge's summing up failed to enforce that aspect of the matter on the minds of the jury it might be considered to be misdirection.

On the first day of the summing up, although there are errors and repetitions which are unfortunate in a case of such grave importance, the main issue of the case is kept fairly before the jury, but on the second day, the day upon which the jury is to leave the box and decide upon the life and death of the woman in the dock, the real point of the case gets hopelessly lost in a wandering recapitulation of incidents of immorality and questions of motive dangerously dangled before the simple minds of men whose narrow faculties should have been concentrated upon scientific facts. It is almost as though the judge had said: "Gentlemen, all that medical evidence is very dull and difficult; you don't understand it in the least; but just consider what a naughty wife this was and how easily she might have disposed of her husband if, as seems very probable, she wanted to."

This is by no means a burlesque of the judge's method of dealing with the facts of the case. During most of the second day's address he seems to assume that death by arsenic poisoning is proved, and we find him using these words to the jury a few moments before they retire: "Suppose you find a man dying of arsenic and it is proved that a person put arsenic in his plate, and if he gives an explanation which you do not consider satisfactory, that is a very strong question to be considered." Was Maybrick "a man dying of arsenic"? If the judge had reminded the jury of the kind of chemist's shop that the doctors had made of his inside, even a plumber might have hesitated to jump to such a

conclusion. From April 28th to May 10th they gave him diluted prussic acid, papaine and iridium, morphia, ipecacuanha, Fowler's solution of arsenic, jaborandi tincture, anti-pyrine, sulphonal, cocaine and phosphoric acid. He was, moreover, a confirmed drug taker and had for long been an eater of arsenic. Was it fair to say to a common jury, "Suppose you find a man dying of arsenic"? Why not rather state the proposition, as that great lawyer and scientist, Fletcher Moulton, did, "Suppose you consider that Maybrick's death is due to natural causes operating upon a system in which a long course of arsenic taking had developed a predisposition to gastro-enteritis"? Had Lord Moulton been summing up, that is how he would have left the case to the jury, and the prisoner must have been acquitted.

There was a considerable quantity of arsenic found in Maybrick's house, and the Court of Appeal might have heard further evidence as to how it came there. The February before he died a Mr. Blake had given him no less than 150 grains in three separate packets. A very strong point in the prisoner's favour was that the Crown never proved that she had brought any powdered arsenic into the house. Why should she have purchased fly-papers to procure an arsenic solution, either for a cosmetic or for evil purposes, if she was already possessed of considerable quantities of powdered arsenic?

Apart from the prisoner's own statement there was no evidence that she had ever attempted to administer poison to him, and none that she had actually done so. It was proved that he himself took arsenic, but there is no satisfactory evidence that his wife gave him any. Even if it was proved that she had given him arsenic there remained the

question, was it given to him at his own request as a medicine or with intent to murder? One would have thought that all these matters would have been adequately represented, and that as the jury were leaving the box some solemn warning would have been given to them that the first issue they were to decide was whether Maybrick had died of arsenic poisoning at all, and that, in all these difficult matters they had to consider, the prisoner was entitled to the benefit of the doubt.

But the last words of the judge are painful reading, for his mind seems full of an anonymous letter he had received which had no bearing on the prisoner's guilt or innocence. A Court of Appeal, had there been one in those days, might well have come to the conclusion that the jury were at the last allowed to leave the box without adequate instructions as to their duties.

A summing up by Mr. Justice Stephen was noted for a simple and lucid statement of legal principles, a masterly analysis of facts and a stern repression of irrelevant matter. The Appeal Court might have considered that some of the judge's address to the jury fell so far short of his high standard as to amount to a misdirection, and might have come to the conclusion that the evidence seemed to invite the Scots verdict of "not proven," which in English we can only translate by the words "not guilty."

Many will believe that Florence Maybrick's story is one of relentless fate. Fate flings the dice, and who can escape the inevitable? For it is easy to trace in the warp and weft of the facts the pattern of an innocent story translated by fate into the appearances of a tragic crime. A young and careless woman, a foreigner and stranger to her husband's relations, stooping, no doubt, to a foolish intrigue,

is dragged into a net of circumstances in which her very struggles to do right only serve to entangle her the more securely in the meshes of suspicion. Everything she says or does tells against her. Only her husband does not seem to suspect her, and when he dies she is left in broken health, penniless, alone, without friend or adviser, to meet a charge of murder. Her enemies collect evidence against her; no one collects evidence for her. When she wishes to tell her story the police stop her, and when at long last she makes her naïve and trembling statement from the dock, her own advocate can make nothing of it, and the prosecutor and the judge seize upon it as the missing link in the chain of evidence which is to destroy her.

If she was innocent she was sadly sinned against. For fifteen years she was imprisoned for an offence for which she was not tried and had not been found guilty, and no one who reads the reports of her trial with an open mind can be readily convinced that the evidence justified the verdict of the jury.

### 3. THE THAW CASE

Grave mentors and serious judges condemn the interest and curiosity of the common citizen about the details of the squalid cases of crime that find their way into the courts. I have always been doubtful whether the superior person or the man in the street was the more easily justified in his attitude towards these unpleasant affairs.

It is not difficult to ignore the stories of crime and criminals, but after all, as a citizen, you may be called into the jury-box at any moment to adjudicate about such matters, and it would not be sufficient for your release to tell the court that you cared for none

of these things. You would find that ignorance of life was no excuse.

Why do we say that a story of real life is squalid and a poet's story is a noble tragedy? Probably because we live in the same street with the one and regard the other as a strange and beautiful dream. An eternal triangle in the Divorce Court is squalid, but the same story in a novel or in a play is, the critics tell us, a moving and beautiful lesson.

Take the lesson of Helen of Troy, for instance. Had the only record come down to us in the shape of a report in the *Evening Papyrus* of the sensational divorce case of *Menelaus v. Menelaus*, Paris correspondent, as tried in the Probate, Admiralty and Divorce Division of the High Court of Athens, what a squalid story it would have seemed. For what is the essence of it but a struggle between two men of no importance for the possession of a beautiful and fashionable lady? Nevertheless, it has been the theme of much poetry, good, bad and indifferent. It is the treatment that does it.

No doubt you could spin a romance or a poem out of the Thaw case. Delphin Delmas, the great Californian advocate, in the first trial endeavoured with sound dramatic instinct to envelop his client in the mantle of a noble St. George rescuing a maiden from a modern dragon. The facts and District Attorney Jerome were too many for him, but at least he pointed to the romance of the business.

But the real interest to thoughtful citizens of the two interminable trials of Harry Thaw is that they mark very clearly some weak spots in our modern administration of criminal law. These weaknesses are common to the administration of our own and other civilised countries, and have had similar



results in many trials in our own courts. In the first place it is exceedingly difficult to get a jury to convict in a case of murder, especially where the murderer has respectable friends and relations. This is mainly on account of the death penalty, and we find that acquittals and disagreements are frequent. In the second place, to leave the determination of questions of sanity or insanity in the hands of a jury of ordinary citizens is, on the face of it, absurd. This we recognise ourselves by promptly overruling the decision of a jury if it is not officially approved after conviction.

As a problem play in social reform the Thaw case is perhaps worth recalling for a moment. The story is certainly not without interest. Evelyn Nesbit, the heroine, was undoubtedly a very beautiful girl. If you cannot say of her little angel face that, like Helen's, it

“launched a thousand ships  
And burnt the topless towers of Ilium,”

yet to my mind it did even more remarkable things, for it launched a litigation that brought many thousand pounds into honest lawyers' pockets, and it threw a useful searchlight on the unwholesome social conditions that obtained among the idle and wealthy of New York.

Whilst she was quite a child Evelyn's beauty attracted many eminent artists, to whom she sat as a model, and about the age of seventeen or eighteen she went on the stage in the chorus of *Floradora*, in a New York company. About this time she met Stanford White, an architect of considerable eminence and a figure in society and the theatrical world. He was a man of fifty-five, and he undoubtedly entertained the young woman and assisted her to

obtain engagements. His friends alleged that he took a merely friendly interest in her career and tried to keep her away from Thaw.

Harry Kendall Thaw was a young man of over thirty, leading the ordinary life of a man about town with nothing to do. He was a son of the late William Thaw, Vice-President of the Pennsylvania Railway, a Pittsburg millionaire, and was said to have an income of £16,000 a year until he became thirty-five, when he entered into his inheritance of millions. White seems to have disliked him and to have prevented his being elected to a fashionable club. Thaw, like many others of the same set, was deeply attracted by Evelyn Nesbit's angel face. Mrs. Nesbit, her mother, seems to have been troubled about it. Tyndarus, you may remember, was excessively annoyed by the number of illustrious princes who came after his daughter Helen.

How far our American Helen fell in love with Thaw is at least doubtful. Thaw, it is said, was not much to look at. He is featured with a bulging forehead, protruding nose, long stringy hair, already tinged with grey, and a sickly complexion. However, he has money. He persuades Evelyn and her mother to go abroad. They travel to Europe. Some say that he marries her in Paris, but there seems no evidence of this. But she toured about with him and left her mother in England.

In Paris, when they are living together, she is said to have divulged to him a terrible story, to the effect that White had drugged and seduced her, and that for that reason she could not think of marrying him. However, they go to the Rat Mort, in Montmartre, and meet another American lady, and get her to do the cake walk at 2 a.m., and Harry gets a new

automobile to drive her into Switzerland, and the terrible past seems to be easily forgotten in the gay and merry present. Moreover, Thaw is found, at a date apparently after this shocking story has come to his knowledge, to be cabling over to Stanford White to get him to use his influence to placate Mrs. Nesbit, who is in London, no doubt greatly perturbed about the foreign tour of her daughter and the young millionaire.

At this time, at all events, Thaw, with full knowledge of all the circumstances of White's alleged misconduct, does not seem to have allowed the matter to weigh unduly on his mind. The young people return to New York in the autumn of 1904. They stay together at first, and then White and the Thaw family between them manage to separate them. At this time the lady seems to have been inclined to consider Thaw had treated her cruelly. She is alleged to have put her hand to an affidavit, made before one Abe Hummell, that Thaw had carried her off to an Austrian castle and treated her with shocking barbarity. Later on it is said this affidavit was made at White's instigation, and Abe Hummell was afterwards convicted as a forger and perjurer, and the whole incident may be quite unworthy of belief. The affidavit, or at least a photograph of it, is produced in court.

When Evelyn Nesbit became Evelyn Thaw she certainly knew enough about her husband to know that he was a man of abnormal temperament, given to sobbing and biting his nails and gazing into space and refusing to answer questions when things worried him. As against that he had money and the power to give her a good time, and he seemed devoted to her.

It is hard to understand or express any real belief

in any of the various stories told by the parties to this painful melodrama, but some general outlines of these things is necessary as bearing on the alleged insanity of Thaw and the probable causes of it.

In April, 1905, we at least get at one trustworthy fact, for on that date, with the blessing of the Thaw family, Evelyn and Harry are married at Pittsburg, she being about twenty-one and he about thirty-four.

Very soon after the marriage Thaw began to threaten openly that he would be revenged upon White. He took up the attitude that White was a modern Minotaur, and that Providence had given him a mission to play Theseus and rid the world of him. White's friends warned him about Thaw's threats, but he merely laughed at them.

On June the 26th the climax arrived. Thaw and his wife entertained some men friends of their set at the Café Martin. During dinner White came in, and Mrs. Thaw foolishly pencilled Harry a note to the effect that "that dirty blackguard is here." The party went on later to the Madison Square Roof Garden. It was the first night of a new musical comedy, *Mamzelle Champagne*. White was at a table near the stage. Thaw left his wife and strolled about the garden as if looking for someone. Suddenly he saw White and sauntered up to him, stopping at his table and leaning over it. As soon as White saw him he moved as if to rise, but Thaw gave him no time.

"Curse you, you ruined my wife; I am going to kill you," he cried.

He fired three shots. The first bullet buried itself in a wall, the second caught White in the shoulder, the third struck his head, and he fell on the ground dead.

"He ruined my wife and I have got him," said Thaw, and strolled away.

At the moment it happened, as chance would have it, a chorus had just stopped, and one of the actors said, "Then let the duel go on." The shots were at first thought by many to be part of the piece. But only for a moment. A young woman knelt down by White's body and uttered a shriek. Someone called out, "He's dead." There was a disturbance. The performance ceased, and people gathered round the body.

Thaw meanwhile walked towards the exit, where his wife came to him and threw her arms round his neck, sobbing hysterically. The police arrived, and he was taken into custody. By way of stamping the deliberation of his act he told them that he had seen that scoundrel White at the Café Martin, "big, fat and healthy, and she, his wife, trembling and nervous," and had determined to destroy him.

These were the short facts of the crime which gave rise to two of the longest and most strenuously fought legal battles of modern times.

That Harry Thaw had deliberately murdered Stanford White in a brutal and cowardly fashion was beyond doubt. In a civilised country like America, where the courts are guided as ours are by written as opposed to unwritten law, there could, it seems, be only one of two results to the prosecution. Either the jury would find Thaw guilty of murder and he would be rightly executed, or he would be found to be insane when he committed the act, in which case he would be kept in an asylum during the pleasure of the State.

For the present he was carried off to the Tombs Prison and placed in a cell in Murderers' Row to await his trial, and the world was presented with a

first-rate scandal and sensation. When we study the details of these trials we shall find in them food for reflection about our legal methods of dealing with such matters, and may, perhaps, be moved to consider whether in the punishment for the crime of murder in modern days the author of Genesis has said the last word.

For the moment the newspapers of New York, and gradually those of a wider world, filled their columns with strange pictures of the orgies of American society. It appeared that the murder had struck terror into the hearts of the dwellers in the Tenderloin district of New York. This district was the centre of the fashionable night life of the city. Here were the restaurants and theatres and clubs and opportunities for a discreet police officer not to see too much. The name attached to it from a chance remark made by a captain of police when he was put on night duty in these parts. He is reported to have said to a chum: "I guess now I'll give up chuck steak and freeze on to tenderloin."

It was soon noised abroad that Thaw had shot White because his wife, the angel-faced child, Evelyn, had been ill-treated by White, and it was rumoured that the police knew and connived at White's misdoings. On the other hand, there were those who thought that White was no worse than many another, and that the confessions of the girl with the angel face must not be taken at face value.

The murder took place in June, 1906, and on January 23rd, 1907, the trial began before Mr. Justice Fitzgerald. "Harry K. Thaw to the bar" calls out the usher, and the man who killed Stanford White takes his place at a table within the bar, facing the judge. Thaw had some half-dozen counsel, but had intimated that he intended to keep the reins



of the defence in his own hands. The family seemed to place most confidence in the silver-tongued Californian advocate, Delphin Delmas, a man of great reputation in Western cases in upholding the unwritten law. Thaw himself seemed to favour Mr. Gleason, and wished him to lead.

The first eight days, after the American fashion, were taken up in obtaining a jury. Then, on February 3rd, Mr. Garvan, who with District Attorney Jerome appeared to prosecute, opened the case. His speech lasted ten minutes. The facts of the case were short and not in dispute. He claimed for the prosecution that this was a cruel, deliberate, premeditated and malicious taking of life, and asked for a verdict of murder in the first degree. If the jury found that verdict the prisoner would be electrocuted.

The few witnesses necessary to prove the murder were taken before the luncheon hour. Delmas asked them a few questions of no great moment. Now if all questions of sanity were left to an expert commission, the jury would at this stage have found the prisoner guilty of the fact of murder, and their duty would have been at an end. But mark what follows. Mr. Gleason rises to open the defence. It soon appeared that the sole plea to be raised was that of insanity. It was put forward that at the time Thaw committed the murder he did not know what he was doing, and that he believed he was acting as an agent of Providence.

No one can study the evidence given in this trial without seeing how absurd it is to put such a matter into the hands of a jury for decision. They cannot even understand, for the most part, the language in which the matter is being discussed. The first witness for the defence was a Pittsburg doctor, put

forward to prove Thaw's insanity. Mr. Jerome exposed the limits of his capacity very cleverly.

"Is it not," he asked the unhappy doctor, "the fact that all the functions of the human body are controlled by the pneumogastric nerve acting through the spinal marrow, or medulla oblongata?"

The doctor seemed to think this was a riddle, and gave it up in despair. The jury, who knew less about it, could only notice the doctor's discomfort. Thaw's friends were troubled. The doctor may have been a clever man, but he was no expert witness. After the court rose there was a council of war. Gleason handed in his baton and Delphin Delmas took command.

Delmas was born in France, and was now, at the age of sixty-two, at the height of his fame. Clean-shaven, suave, full of sympathy, there was in his appearance more than a touch of the Napoleonic aspect, and he could show on occasion a bold and determined front. His conduct of the case was excellent. I do not believe he expected an acquittal. As I read his tactics, he knew that his client was a decadent who had worked himself into a jealous frenzy and deliberately murdered a man he hated, he did not believe him to be insane in a legal sense, but he used the plea of insanity as a stalking-horse behind which he shot his bolts of sympathy into the hearts of the jury in the hope that they would disagree.

This is why our legal system of dealing with these matters is dangerous. In a case of this kind all the judge and lay jury can usefully do is to find the prisoner guilty of murder. Then a wiser system would leave to a tribunal of expert lawyers and doctors the public trial of the question of the murderer's sanity. Delmas, however, as an advo-

cate, was bound to make use of the system to save his client from the electric chair, and the way to do it, and to persuade the jury that he was mad, was to call lay witnesses to speak to his strange conduct.

His first witness was Evelyn Thaw, and he took her through the story of her life, not, indeed, as having a direct bearing on the issues of the case, but as a story that she had told her husband, which he had believed, and which he had dwelt upon with sullen perversity until it turned his brain and drove him to commit a mad act, the meaning of which he really did not understand.

It was skilfully done, and the young woman gave her evidence with great tact. It was of course a terrible indictment of the murdered man, but then it was not evidence against him, and whether true or not evidence refuting it could not be permitted. It was only put forward as a story that drove Thaw mad. It might of course be a fairy story, but legally that was no matter. At the same time District Attorney Jerome was far too skilled an advocate not to see that a beautiful woman telling such a tale of woe was a most powerful lever to use in moving the jury into undesirable paths. He watched Delmas closely and weighed every question he put. He could not stop the girl's own story, which she said she had told her lover when she refused his hand in Paris, but when Delmas asked her whether White had behaved badly with other girls Jerome was on his feet on the instant, calling out his objection to the judge: "Are there no limits to which the defamation of the dead may go?"

The judge disallowed the question. The sense of the jury took command of their sympathy. Delmas had pushed too far ahead. Jerome had

scored in the repulse. Such is the drama of litigation.

These revelations and the production of an extraordinary will made by Thaw, and the calling of a witness from the offices of an Anti-Vice Society to prove that Thaw had lodged complaints with him about White and given the society a cheque, seemed to exercise considerable influence on the minds of the jury. To bring them back to the real issue of the case Jerome obtained a ruling that, before he cross-examined Mrs. Thaw, the defence should call the rest of their medical experts. The medical line of defence was that Thaw was mad at the time he committed the crime, but was now sane again, a very popular and convenient theory with the friends of murderers.

Dr. Evans, one of the experts called by Delmas, put the case very sensibly. He said it was a "maniacal form of adolescent insanity due to exceptional stress acting on a mind predisposed to disease by hereditary influences." When he visited Thaw in the cells he found him suffering from the after-effects of a severe brain-storm, coupled with megalomania and a conviction that he was being persecuted.

Dr. Evans cited conversations to show that Thaw had a crusade against White, and thought that he was appointed to carry out the decree of Providence, also that White was a criminal whom the authorities were protecting from prosecution, and he was his ordained prosecutor. It was hard on the friends of White that these things should be reported, but it was of course only evidence of Thaw's insanity, not evidence that White had done wrong. It was difficult for a jury to follow this distinction.

Jerome's cross-examination of Mrs. Thaw was very skilful. It is always difficult to cross-examine

a young and beautiful woman about unseemly happenings without losing the sympathy of the jury. He showed by his questions that the girl had been friendly with White long after the alleged cruelty and seduction, that she lived an ordinary chorus girl's life, revelling in champagne, flowers, suppers, sweets, "such things as girls love." Then he brought out that after the alleged date of the confession, which was said to have turned Thaw's brain, he was cabling to White in friendly terms, and that after the return from Paris Evelyn had been inclined to take up with White again, and had gone to his solicitor to make charges against Thaw.

As to the truth or falsehood of the various allegations made, no one used to weigh evidence would care to express any very decided opinion. When Jerome had finished his cross-examination, however, it would be difficult for a man of the world to think that Thaw was instigated to murder by any higher motive than insane jealousy.

More experts were called, and Jerome tried to get the matter sensibly ended by a reference to a lunacy commission. The trial was adjourned for this purpose, but the commission refused to find that Thaw was now insane. Thaw's friends regarded this as a victory.

It was April before the final speeches of counsel were arrived at. Delmas sobbed over the iniquities of White and the tortured mind of young Thaw driven to sudden madness by the terrible story told him by his young wife. Jerome calmly dissected the various statements and admissions of the young lady, and bade the jury discount the attractions of the angel face.

The jury retired, and after a long-continued absence returned and disagreed. It was stated that

eight were for murder in the first degree, a result that went to show that as far as the jury were concerned the fairy story of Thaw in the character of St. George destroying a modern dragon had not appealed to them, and they considered the crime to be one of murder prompted by jealousy.

The figures of the jury's decision made it clear that the District Attorney must try the case once more, and on January 6th, 1908, Thaw again faced the judge. On this occasion Mr. Littleton defended him, and his early history was more carefully gone into to exhibit his insanity. It was proved he had had fits of mania and had actually been confined in an asylum in Devonshire when in England. Thaw, in the dock, constantly interrupted in an insane way.

After a long trial the jury found he was not guilty, because he was insane at the time of the commission of the act charged in the indictment, and the judge formally committed him to an asylum.

Jerome threw his arm round his fellow-advocate, Littleton's, shoulders, saying as he left the court: "I am glad it turned out the way it did, old man; it is a proper verdict." As for Thaw, not being allowed to stand his friends and the reporters a champagne lunch, he calls for cocktails round and retires to the asylum under the title of No. 719, where a saner legal procedure would have placed him months ago.

This particular case is of course not our affair, but it has its lessons for us, since our law and procedure are much the same. Supposing there had been no death penalty, it is reasonable to believe that the eight jurors ready to convict the prisoner of murder could have persuaded the remainder to agree. If the expert question of Thaw's sanity had been left to a legal and medical commission, after he was



found guilty of the murder he had undoubtedly committed, that business could have been speedily and wisely settled without the expense and sensation that attended, and will always attend, such trials. It is an absurd form of waste for a civilised state to spend several hundred thousand pounds in dealing with such an obvious proposition as the case of Harry Thaw.

The death penalty to-day acts as a restraint upon conviction where the evidence invites conviction, and since the verdict of a jury as to insanity is never acted upon if contrary to official medical opinion, the question should be decided by a more suitable tribunal. These are the lessons of the Thaw case.

## CHAPTER FIVE

### CONCERNING ONE-PART PIECES

1. WILLIAM ROUPELL.    2. CHARLES MACKLIN.

3. HENRY JAMES PRINCE

THE one-part piece is not the highest form of drama perhaps, but it is certainly most popular with the great actor and his audiences. Irving revelled in *The Bells* and *The Lyons Mail*, two great melodramas in which perhaps he reached his greatest heights as an actor, since his personality naturally lent itself to melodrama, whereas it had to be slowly dulled and disciplined to overcome the forces of tragedy. Dear Joe Jefferson in *Rip Van Winkle* entertained many generations, and one can still hear in the mind's ear his pleasant voice, speech, half asleep, or song, half awake, as he lifts his glass to the audience before he departs into the mountains, leaving behind him the kindly thought, "Your good health and your family's; may you all live long and prosper." Alas, poor Rip, the tide of your fortunes has swept out, and the village of Sleepy Hollow is a dry desert where no healths can be drunk. Sothern, one remembers too, as Dundreary lolling on his bed lazily hurling his hair-brush across the room at the candle, which, by the bye, he never missed, and delighting us with his stutter and his absurd *chassé* across the stage. A memory of Toole seems to be

a cyclopædia of one-part plays, short and long—yet how splendid it was in boyhood to spend an evening of hearty laughter with Toole—and more Toole—and yet more Toole.

In the same way we find in our legal dramas certain pieces are enacted in which the centre of attraction is one actor, and all the others are merely persons in his dream. William Roupell was Dubosc and Lesurques, or rather Jekyll and Hyde, and is certainly a creature of romance. Charles Macklin naturally stepped into the limelight of the courts when he found himself in a lawsuit, and Henry James Prince, who in a civilised and religious country cast himself with success for the part of an eternal deity, is certainly the hero of a one-part piece. Many would classify his drama among crook plays, but I am not certain that he was merely a Tartuffe.

## I. WILLIAM ROUPELL

William Roupell was only a suburban actor. In the groves of Camberwell, the broad streets of Lambeth, and the lanes of Streatham, he was an honoured figure as the favourite son and major-domo of his wealthy father, Richard Palmer Roupell. He it was who made the name of Roupell famous in the bricks and mortar of South London, where you may find it to this day immortalised on the street corners in the wilds of S.W.2. Thus the older man amassed monies. He had £120,000 in cash, it was said, and large estates worth £200,000 in the Home Counties.

William Roupell, though only a suburban actor, had the true artist spirit. He chafed at playing the small utility part of his father's clerk of the works. As the wings of a moth carry it involuntarily to the

candle, so do the feet of the actor draw him, face upturned and arms outstretched, into the limelight. It is an instinct rather than a vanity.

On the last night of his play-acting William Roupell described himself as a "living paradox." He could not account for his amazing career, even to himself. Yet at this supreme last moment of his life he seemed complacent and satisfied. He was in the limelight. He had dedicated his life, honour and liberty to win a brief turn in the centre of the world's stage.

At last he trod the classic boards of the Old Bailey. He had achieved his end. He was the acknowledged hero of a melodrama. A sordid play, no doubt, but it had one great situation with all the flare of the lights full on the hero and William Roupell alone on the stage as the curtain fell.

The first act of the piece is tame enough. Mere domestic comedy, with a touch of the problem about it perhaps. Old Richard Palmer Roupell was a skinny, grubbing fellow. His father before him, also reported to be a curmudgeon, had objected to Richard marrying. So Richard lives in his rooms in Cross Street and has a week-end house at Streatham. Here he is called Mr. Carter, and there is a Mrs. Carter with four children. William, the second son, is our hero.

In 1838 Richard's father dies, and Richard marries the lady with whom he had lived, and the family become Roupells instead of Carters. Another son is born and named Richard. But the week-end habit continues and Richard Palmer only visits his wife occasionally. The family are respectably educated. William is apprenticed to an attorney and admitted to practice, but does not follow the

profession, having sufficient to do in assisting his father and making speculations of his own.

In 1855 William must have been about three-and-twenty. His father was very proud of him. Both took a deep interest in Roupell Park, their building estate at Brixton. William is described as a steady young man given to learning. He is a volunteer officer and in every way a model Victorian son. The old man showed his trust and confidence in his son in every way except providing him with money.

In his last speech from the dock William complains of the privations of his early life. He draws a pretty picture of his first downward step. "At the age of 21," he says, "I incurred a debt to purchase books—that debt was contracted with one who was connected with me by the most intimate tie. My friend who lent me the money suddenly became involved in grievous pecuniary troubles which caused him to meditate suicide. I could not pay him the money I owed him. I could not get assistance, and I risked my soul to save my friend."

At this point William wept. Many in court were affected. But old Byles on the bench remained dry-eyed and unbelieving. The story was good stuff for suburban groundlings, but the judicial mind had no use for it. The truth seems to have been that in 1855 William, being already deep in some speculations of his own, obtained the deeds of his father's Norbiton estate, had counterparts made which he returned to his father, and, after forging a deed of gift to himself from the old man, dealt with the estate as his own and received about £7,000.

As he had the general management of his father's

business he was able to keep the transaction from his father's knowledge. Later on there was a further forgery of deeds in connection with the Warley estate of the value of £15,000, and also a clever and complicated transaction with a forged deed of an insurance company by which he robbed his father of another £5,000.

Some of this money went in speculations, and some of it probably in riotous and extravagant living. William had chambers in St. James's Square, and it is alleged that his manner of life in London was wholly different from his course of conduct in sober Streatham. But these occasional joys were not what William yearned for. He was at present only playing the uncertain part of a walking gentleman who at any moment might be cashiered and out of the bill. He wanted to be a leading actor. With the aid of his parent's wealth this might be achieved.

All the time William was stealing his thousands the doddering old man was chuckling with glee at having so clever and cheap a manager as good Mr. William, and listening with respect to his son's stories of successful trade and speculation in London. And William was wearing out his soul in the part of a clerk of the works in a building concern, wondering when his father would have the decency to die and what further crime he would have to commit to consolidate his precarious position. He knew he was a hero and a great man. He had already done great crimes, and done them well and successfully, but there were still new worlds to conquer before he came into his kingdom.

In August, 1856, Richard Palmer Roupell, who was 74, was feeling in bad health. He had a genteel respect for his only legitimate son Richard, now a



lad of 16, and had made wills in his favour, leaving him the very estates which William had fraudulently dealt with. He now adds a codicil confirming these trusts in Richard's favour. Then on September 12th, in his lonely rooms in Cross Street, attended only by his housekeeper, Mrs. Hunnum, he takes to his bed and dies.

The sad news comes to Aspen House, Streatham. Poor Mrs. Roupell is overwhelmed with grief. Her good son takes her in a coach to Cross Street. As they jolt over the pavements, William is full of thought. The great moment has arrived. What kind of will had the old man made? Who are the executors? How can he cover up his crimes? So he sits staring, dry-eyed, out of the coach window, screwing his courage to the sticking-place, while the poor widow sits sobbing dismally at his side.

Arrived at Cross Street, the woman Hunnum meets them, red-eyed, and hands the master's keys to William. Mrs. Roupell joins her tears with the housekeeper's. She refuses resolutely to go upstairs, and at the very thought of it breaks out into uncontrolled grief.

William, leaving them, goes upstairs alone. He enters his father's room. The corpse lies on the bed. He looks at it uneasily. The eyes are closed. He pulls up a blind half-way and goes straight to his father's escritoire. Quickly he turns over the papers. A will of 1840, another of 1850, and a codicil of August, 1856, lie temptingly at his disposal. He puts them in his pocket, draws down the blind, glances round at the poor figure on the bed, and with a sigh of relief carries off the plunder.

These few days before the funeral proved that in resource and daring William Roupell was among the aristocrats of crime. His ideas were great and simple

and among a world of fools such a man was bound to succeed, though the risks he ran seem to have been full of hazard.

It was obvious that if the wills, or the drafts of them, saw the light he must be ruined. Merely to destroy the documents therefore was useless. He took up his quarters in Cross Street, and alone in the house with his dead father he went boldly to work.

There was an old man named Moggeridge, living at Kennington Cross, aged 85—nearing the time when he would tell no tales. He was a collector of rents in the father's employ. William took him £5 down for mourning and asked for a receipt. He had cast Moggeridge for the part of an attesting witness. He then went to a stationer's in Gracechurch Street and bought a printed will form. He dated this September 2nd, 1856, and filled it in, devising all the property to his mother, making her executrix and himself executor.

Moggeridge's signature, as he acknowledged afterwards, he found very difficult, but he worked steadily at it, and at last satisfied himself. His own he added lightly with his gold pen to form as strong a contrast as possible. His father's signature was made with the old man's own quill and his own ink at his own desk, a dramatic touch with which William was very satisfied, as if he felt that the presence of his father in the coffin gave some sort of sanction to the forged signature.

On the day of the funeral the last will and testament of Richard Palmer Roupell, which was William's masterpiece, was read to and accepted by the few friends present without remark. Mrs. Roupell refused the position of executrix. The real heir-at-law, Richard, was only 16 and a boy at school.

William swore the necessary perjuries before the surrogate, and now had the whole of his father's estate at his sole disposal, and no one but the willing mother and young brothers and sisters to criticise his actions.

But for his overpowering vanity and craze for the limelight, William Roupell might now have retreated into safe obscurity, buried his crimes in his father's grave, dealt wisely with the great wealth at his disposal, lived as the idol of his family, the centre of suburban adulation, and passed away, deeply regretted, the type of a Victorian citizen.

But the call of the drama was upon him. He burst out into a wild display of extravagance and profusion. Among his many efforts to reach the centre of the stage he had the curious ambition to become a Member of Parliament. He stood for and was returned as Member for Lambeth. He had no political views of any importance, except that he seems to have been shocked at the immorality of opening museums on Sunday.

Criminals are often punctilious in outward religious observance. The only claim Roupell had to the franchise of his fellow-citizens was through his wealth. Money was spent like water on public-houses, canvasses, committees, printers and any other form of expenditure that could debauch the constituency. For a few weeks he tasted the glory of political limelight at a cost of £10,000, and then faded away into the familiar obscurity of the unknown M.P.

Of his other extravagances and struggles to keep in the public eye, nothing seems to remain but vague stories of ridicule. The "Wiscount," as *Punch* nicknamed him, was rather a lamentable, tawdry

figure of buffoonery than anything dignified and heroic.

But the climax came, and with it the situation that the suburban actor had waited and worked for. In 1862 he had wasted everything he could lay hands on. He resigned Parliament, boldly announced his crimes, and fled to Spain.

The last act of the drama opens at Guildford Assizes. Young Richard Roupell, the legitimate heir-at-law, is now twenty-one. He lays claim to the Norbiton estate, endeavouring to eject one Waite, who holds under the title of the forged deeds.

Serjeant Shee opens a case that amazes the world. He details the forgeries and asserts that he can prove them, and admitting that his client would have no title if the existing will is valid, undertakes to prove that that, too, is a forgery of William Roupell.

Bovill and Hawkins for Waite are there to object and hinder the Serjeant in his evidence. They suggest that William is merely a liar and no forger, and that the case is a sort of conspiracy against their client. Anyhow, they confidently challenge the Serjeant to put William Roupell in the box.

The case drags on its weary length, and the jury full of sympathy for Waite, are not greatly impressed with the chain of evidence produced. At length Serjeant Shee rises and in solemn tones says: "Call William Roupell." The crowd in court is literally breathless. Will the actual forger and perjurer come forward and confess and take his doom? A young fellow pushes his way through the crowd. He steps boldly into the witness-box. It is William Roupell.

Silently and unobserved a sheriff's officer takes his place at the steps leading to the rostrum. William is carefully dressed. He wears a frock-coat buttoned

tight at the waist. His curly hair and bushy whiskers are well groomed. He stands upright and militant, but his face wears the air of a patient wronged man who is doing a beautiful action. He tells the detailed story of his villainies with zest and dignity.

An air of sympathy surrounds the hero as the audience recognise that he has voluntarily come into the box knowing that he will never again be set at liberty and that as he takes the book in his right hand and kisses it with quiet reverence he is dooming himself to a living death in jail.

His part played out, the parties settle the case. Within a few months he makes his absolutely last appearance ; this time in the dock at the Old Bailey. He pleads guilty to all the indictments, makes no appeal for mercy, but reads an unconvincing and elaborate apology for his crimes. As he had forecasted, the sentence is penal servitude for life. A few years earlier it would have been the gallows.

He listens courteously to the judge. A wan smile comes across his face as the sentence is pronounced. He looks vaguely round the court and the curtain falls upon him for ever.

Was he a repentant sinner or merely a victim of vanity ?

## 2. CHARLES MACKLIN

Charles Macklin was the Grand Old Man of the English stage. He lived to the age of 97, or, as some have maintained, 107, and played Shylock and other leading parts within ten years of his death. It was when he was a youngster of 73 that he was cast for a star part in the law courts, which he played to the confusion of his enemies and the content and applause of the general public.

Macklin, like many another good citizen, had no

love of law and litigation. In his farce, *Love à la Mode*, he gives Sir Archy MacSarcasm—his own part—those well-known lines: “Oh, sir, ye dinna ken the law—the law is a sort of hocus-pocus science that smiles in yer face while it picks your pockets; and the glorious uncertainty of it is of mair use to the professors than the justice of it.”

The happy phrase “glorious uncertainty” fell straight into the English language, where it remains a constant libel on a great profession. But when Charles Macklin was in need of protection he appealed to the law, and, with no uncertain voice, the law, returning good for evil, did him ample justice and laid down for all time sound principles to protect His Majesty’s servants the actors from malice and persecution.

Early in 1773, when Colman was manager at Covent Garden, Macklin, with a touch of youthful egotism not unpleasing in a man of 73, wrote and suggested that he would like to play Richard III, Macbeth, King Lear, “and other parts, such as would suit his time of life.”

The old actor, sitting neglected by his fireside, is always under the impression that a new generation is thirsting to see him acting again. Thus Quin, too, when he had retired to Bath and John Rich was manager of Covent Garden, offered his services, with dignified brevity, sending the following missive:

“Dear Rich,—I am at Bath.—Yours, James Quin.” To which Rich replied: “Dear Quin,—Stay there and be damned.—Yours, John Rich.”

And some such answer Colman would, I think, have returned to Charles Macklin had it not been that the actor’s offer arrived at a moment when Colman was placed in a difficulty by his leading



actor, Mr. Smith, deserting him and trying to set up for himself at the Haymarket.

Macklin was therefore engaged, and it was expressly agreed in his contract that he should play Macbeth and Richard III. These were parts that "belonged," as the slang of the stage goes, to Mr. Smith. Therefore when Smith, having failed to get a licence for the Haymarket, returned to the camp of Colman, there were two Richmonds in the field, both claiming the right to play Richard and Macbeth.

In eighteenth-century London a theatrical dispute of this character was a burning public question.

Smith having played Richard, Macklin was announced for Macbeth. There was nothing in his performance to rouse the anger of a reasonable audience. True, he discarded Garrick's tail wig and suit of scarlet and gold which was then the regular dress of Macbeth, it being thought fitting to play the part in the up-to-date costume of an English general. Macklin, who was one of the first apostles of stage realism, played the part in a kilt and made his entrance to the music of the Coldstream March.

The performance seems to have been reasonably well received by the audience. But the Press of the day ridiculed it. Some say the opposition was set in movement by Garrick himself, who, like many another great actor of old times, was inordinately jealous, and Macklin's friends openly charged Garrick with helping to organise the anti-Macklin party.

There is no doubt that the attack on Macklin did not spring from any spontaneous ill-will or discontent of the public generally, but were the result of a deliberately planned conspiracy of his rivals and enemies.

On the first night Macklin was informed that a Mr. Sparks, the son of an actor, and Mr. Reddish, the best stage villain of his day, had both been in front and hissed his performance. For an actor to hiss another is an unforgivable offence against professional etiquette. Many years afterwards Forrest, the American actor, damned himself in the eyes of his fellow-artists by hissing Macready at Edinburgh. Macklin, at a second and more noisy performance of Macbeth, appealed to the public for protection, and, on his stating his charge against Reddish and Sparks, the theatrical world was properly indignant and sympathetic.

But now Reddish and Sparks made affidavits denying the offence, and Macklin, at a further performance, instead of withdrawing and apologising, came forward with counter affidavits of people who swore they had heard them hissing. These roused the rival parties in the audience to a frenzy of excitement, and the piece was performed amid constant uproar and interruption.

It seems possible that Macklin's friends were mistaken about Reddish and Sparks, and the actor was told as much, but he was not going to give way. He knew he was right. Throughout his long life he had never known himself to be other than right. He was like that eminent modern actor who, when a friend said, "My dear fellow, you are an egotist," replied: "No, I am not an egotist, but I *know*!" Macklin had said, "I *know*," and would never unsay it. His Irish blood warmed at the prospect of a faction fight, and he refused to make the least concession. At the trial Sparks was dismissed from the proceedings and it was not proved that he was guilty.

The anti-Macklinites were just as determined as

Macklin that they would have their own way. They would expel the surly iron-cheeked old fellow from the stage. He was to be ruined. At the Bedford Arms the conspirators met and planned his destruction. They were John Stephen, James and Joseph Clarke, Esquires ; Ralph Aldus, gentleman ; William Augustus Miles ; and Thomas Leigh.

Leigh was a tailor, brother-in-law of Sparks. He was the ringleader and to the last was full of hatred and malice against Macklin. The Esquires and the gentleman were young men about town who were attracted to the affair by the more human lure of mere riot and devilry. Leigh raised a tag-rag and bob-tailed regiment of tailors and other mechanicals from the Dog and Phoenix, the Magpie, and the Antelope, and all the low beer-houses in the neighbourhood, and these readily agreed to take part in driving to hell "an old unknown villain of the name of Macklin" at the price of a shilling a head with beer and supper.

The management, hoping to placate his enemies, persuaded Macklin to appear in Shylock instead of Macbeth, and on November 18th, 1773, the curtain rose on the *Merchant of Venice*. The harmless Antonio was scarcely allowed to tell his companions, "Why I am so sad." The row began at once—a concerted attack from every part of the house, led by Leigh in the pit and Aldus in the boxes. The offending Salarino and Salanio gave up their pretty speeches in despair and were hooted off the stage with coarse threats.

Macklin himself now came forward and endeavoured to make himself heard. He was met by the conspirators with a storm of objurgations. Foul curses and threats, interspersed with hooting and yelling, drowned his voice. He threw out his

arms in appeal, went on one knee and supplicated a hearing, but in vain. The noise increased, and then an apple was thrown, hitting him in the face, and a shower of similar ammunition poured from pit and boxes, driving him off the stage.

The audience now yelled for the managers and called for Macklin's dismissal. Shivering little Mr. Colman, hiding in the green room, authorised the issue of a large blackboard, on which was printed in large white letters, "*At the command of the public Mr. Macklin is discharged.*" This was carried in and placed before the curtain.

It was not enough. The mob called for Colman, who was at last dragged forward and appeared upon the stage. Already the mob were tearing up the benches and had begun to smash one of the chandeliers. One may not blame Colman for bowing to the storm. With difficulty silence was obtained. The manager announced that it was always their object to please the public and conform to their pleasure and that Mr. Macklin was dismissed.

The mob cheered at their victory, and the army poured out of the theatre towards beer and supper at the Dog and Phœnix. Leigh, the victorious general, and his blackguard officers held high revels at the Bedford Arms, and Macklin left the theatre a ruined man, expelled from the stage for ever.

But here, as Serjeant Arabin observes, "The hand of the law steps in and speaks." Macklin consults his lawyers. Proceedings are instituted in the King's Bench against Leigh, Clarke, Aldus, Miles and others for conspiracy and riot. They are duly convicted on February 24th, 1775—Clarke of riot only, the rest of the whole information. The question of compensation to Mr. Macklin is ad-

journed and set down for hearing before Lord Mansfield on May 11th.

For eighteen months the old man had had to stand out of an engagement. What had troubled him even more was that he could not appear for his daughter's benefit, and thereby that popular and deserving actress had been seriously injured. Mob law has this in common with the Mosaic code in that it visits the sins of the fathers upon the children.

At the hearing before Lord Mansfield, that eminent lawyer laid down the rights and duties of actors and audience very clearly.

"To be sure," he says, "every man that is at the playhouse has a right to express his approbation or disapprobation instantaneously, according as he likes the acting or piece; that is a right due to the theatre; an unalienable right—they must have that. The gist of the crime here is coming by conspiracy to ruin a particular man—to hiss if they were ever so pleased—let him do ever so well, they were to knock him down and hiss him off the stage."

No actor has ever objected to the audience applauding, but here the common law right to hiss is equally maintained with sound rigour, though all good playgoers will agree that it is a right that should be very sparingly used, and only under real provocation.

Lord Mansfield was in a very stern mood with these cowardly offenders who had conspired to ruin the old actor, and was for dealing with them very roundly in the matter of damages. But Macklin, who, with all his obstinacy, was not a bad-hearted old fellow, and who was yearning to see across the footlights the grizzled wigs in the pit, and hear once more the grateful applause of an audience, picked up his cue from Lord Mansfield, took the centre of

the stage of the King's Bench, and made a generous and kindly offer of settlement to his defeated enemies.

He disclaimed all thought of revenge. He claimed that he had prosecuted the defendants out of self-defence and for a public example. He did not want money, but he wished for his expenses to be paid, and that a few hundred pounds' worth of tickets should be taken for his daughter's benefit and his own.

Lord Mansfield, who had suggested that the damages must amount to something substantially over £1000, was greatly pleased with this generous offer, and told the defendant's counsel that Macklin, in his opinion, had acted handsomely, honestly and honourably. As for the little tailor, who seemed to the last to be a troublesome proposition, his lordship, inspired thereto perhaps by theatrical example, put the fear of the Lord into his heart by promising Macklin "to bind him by a rule of court to stand committed if he ever so much as by look or word puts you in a passion."

So ended a memorable drama of the law in which an actor played a noble part in real life, upholding the rights of his profession and his public status with great dignity and honour to himself and his fellow-actors. Lord Mansfield was certainly happy and hit the spirit of the piece when he brought down the curtain on the tag: "Mr. Macklin, you have met with great applause to-day. You never acted better."

### 3. HENRY JAMES PRINCE

Everyone has heard of the Agapemonites, though present-day readers could not be asked to treat them seriously. A scientific modern diagnosis of their



spiritual condition would probably be based upon symptoms of hysteria and credulity.

But, like all strange sects that flourish ever so weakly, you will also find a thin thread of good and self-sacrifice running through the crazy pattern of their lives, for without that no fabric can hang together, even for the short space of a century.

The movement in England started with a curious mystic named Henry James Prince. It was a direct descendant of German mysticism, based upon what its authors called the spiritualisation of the matrimonial state. Prince was born in 1811. A weakly lad, he was from early life a fervent disciple of religious mysteries. He studied medicine in his youth, but his health forbade him to continue medical work, and in 1837 he became a theological student at Lampeter. Here, with several other enthusiasts, he founded the Lampeter Brethren, whose methods were based on those fervent missionaries, the revivalists, who from time to time have stirred the depths of Welsh religious life to wild storms of enthusiasm.

He contracted his first "spiritual marriage" with a good woman older than himself who had a great influence in his life. Then he became curate of Charlinch, in Somerset, where he had sole charge of the parish during the illness of his rector, the Rev. Samuel Starkey. This gentleman was—so he believed—raised from his death-bed by the miraculous interposition of his curate. A mild weak man, he became his preserver's second-in-command. The first Mrs. Prince died and at once Prince contracted a second "spiritual marriage" with the rector's sister.

The strange behaviour of the rector and his curate did not please the Bishop, who withdrew

their licences, and they now went out into the wide world to preach their new religion. Prince started the Adullam Chapel in Brighton. Weymouth was the scene of Starkey's operations. They made money. It became a tenet of the faith that everyone should give up his or her property and throw all their wealth into the common stock. By this means large sums of money were obtained.

The success of his methods enabled Prince to purchase a house and land at Spaxton, near Bridgewater, in the beautiful Quantock district. Here he founded the "Abode of Love." His mystic enthusiasm ran to wilder excesses. He himself became the "Beloved." Starkey and a brother of Prince's were the "Two Anointed Ones." There was an "Angel of the last Trumpet," "Seven Witnesses" and other extraordinary officials of his church. Here at Spaxton, in peace and luxury, these strange people lived their unwholesome lives, listening to the sermons of the "Beloved," worshipping him and doing his will.

That Prince, like Cagliostro, Daniel. Dunglas Home, Casanova and other adventurers, had a real hold and influence over the minds of weaklings who fell into his web cannot be denied. No doubt he learned to believe in himself in his own crazy heart. Such people do. But the "Abode of Love" was by no means a spiritual paradise. Scandal attached to it not without justification. Several irate relations of the wealthy spiritual wives of Prince and his apostles made trouble, and at length, like Home, in later years, Prince found himself up against the Chancery Court, that dull prosaic machine that so often makes difficulties when enthusiastic brethren want not only to embrace their worldly sisters, and carry them into the safe harbour of spiritual matri-

mony but also to endow themselves with all their partner's worldly goods.

When Prince had been a curate at Clare, in Suffolk, he had been received into the household of a retired Bermondsey merchant named Josias Nottidge, who had five elderly maiden daughters, the youngest about thirty. These good ladies had means of their own and expectations from their father, and Prince was their pet curate. When their father died, three of these ladies, Harriett, Agnes and Clara, with £6,000 apiece, made up their minds to follow the "Beloved." It was with some of this money that he purchased Spaxton. The three misguided women were married to three of Prince's disciples without any time or opportunity to consult their friends, this being decreed by Prince to be the will of God. Starkey, one of the "Anointed Ones," gave away the brides, and Mrs. Price, Mrs. Cobbe and Mrs. Thomas, with eighteen thousand pounds of the old merchant's money, were taken into the "Abode of Love," and were henceforth entirely under the physical and spiritual control of the "Beloved."

One would have thought that even a servant of God and Mammon might have been content with a *coup* which, to the eyes of the world, had successfully countered the text in that case made and provided. But like all similar characters Brother Prince in his worldly ways was a very greedy knave. There were yet two more Nottidge sisters with £6,000 apiece, and one of them, Louisa, seemed to be of a mental character not unlikely to fall to the wiles of religious prompting.

The story of poor Louisa is set out at length in the Chancery Reports of 1860. By that time the lady had died and the suit was instituted by her

brother Ralph against Henry James Prince, head of the Agapemone in the parish of Spaxton, Somerset, to recover £5,728 7s. 7d. 3 per cent. Annuities, formerly the property of Miss Louisa Nottidge.

In December, 1845, Louisa, who was then forty-one years old, had placed herself under the religious guidance of Prince at Weymouth. It was upon the 9th July, 1845, at Swansea Parish Church, that her three sisters had been suddenly married to Prince's disciples. In 1846 her brother, with great difficulty, had detached her from Prince and his satellites, and as she appeared to him and her medical advisers to be suffering from religious mania she was in November, 1846, placed in confinement, where she remained until May 15th, 1848, when she was released by the order of the Lunacy Commissioners.

On the very day of her release she was met by Thomas, the husband of Agnes, who at once took her to Prince's broker to make the transfer of her money. There was a difficulty in carrying this through at once, as she did not know the right amount of her stock, so Thomas took her down to Spaxton to the Agapemone, where about a fortnight later the transfer was made. She seems to have lived at the Agapemone until her death in 1858, and as she had made no will her brother took out letters of administration and sought to collect her estate.

The point to be decided was whether Prince had exercised an undue influence over Louisa Nottidge by imposing a belief on her mind that he sustained a supernatural character. In order to decide the case the whole career of this strange personality was exposed by the plaintiff's counsel.

There was, of course, the story of his treatment of the three sisters, and in relation to that the threats

that he had used to the youngest bride, Agnes, Mrs. Thomas, who seemed to have been more independent than the other two. She had tried to persuade her husband to leave Prince, but had not succeeded, and on her return to the fold the "Beloved" had shook his clenched fist at her and denounced her, saying, "If ever you dare attempt to influence your husband again in acting contrary to my commands; God will crush you out of the way."

Later on, poor Agnes had fallen badly from the high ideal of spiritual matrimony by presenting Thomas, who was one of the "Anointed Ones," with a son. This had made Prince furiously angry, and he forbade Thomas to return to his wife as soon as he heard that a child was likely to appear.

The poor woman, in February, 1846, within less than a year of her ill-fated marriage, had been practically turned out of house and home, and had taken refuge with some friends named Roberts. Here her child was born. Later on, in 1850, Thomas took proceedings to claim her boy, but the Chancellor Knight Bruce, having heard how Thomas deserted his wife, and listened to the history of the manners and customs of the Agapemonites, decided that the English law was strong enough to rescue the child from temporal ruin and spiritual peril, and granted an order restraining the father from acquiring possession of the infant. In those days it required an overwhelming case of right to deprive a father of the custody of a child.

There is no doubt that, whether sane or insane, Prince once he had raised a sufficient sum of money to retire to the luxury and peace of Spaxton, arrogated to himself tremendous spiritual powers, which he announced to the slavish household around him with blasphemous self-confidence. The

"Beloved" was a being to be worshipped; he declared that he was immortal and could not die, and he assumed the false character of a god. The poor Louisa, when she left the asylum, was, as the Commissioners pointed out, still suffering from delusions. She had told them that she did not now pray to God as there was no use in it. She acknowledged she believed the tabernacle of God to be upon the earth, that Prince was that tabernacle, and that the Spirit of God dwelt therein, Prince's original spirit being extinct. The doctors had indeed only released her from the asylum on the ground that her confinement was affecting her bodily health.

That a gift to this supernatural power, made within a few days of her release from an asylum, when the woman was under insane delusions as to the donee's real character, could stand in any court of law was impossible, and Vice-Chancellor Stuart decreed that the money must be paid over to the lady's brother.

In his judgment the Vice-Chancellor hazarded the suggestion that the man Prince may really have believed in the character he had assumed, but that was, of course, quite immaterial to the issue he had to try. It occurs to one's mind at once that if Prince had been a mere rogue, fully aware that he was robbing Louisa Nottidge of her money, he would have had intelligence enough to put the money in other hands. Then, again, one remembers that even great criminals are strangely negligent in their methods, and Prince was not the type of character to trust anyone but himself with the keys of heaven or the keys of the safe.

It is satisfactory to know that he was made to disgorge, but it did not bankrupt Agapemone. Many years afterwards Hepworth Dixon visited



the "Abode of Love," and he leaves us a pleasant picture of the "Beloved," a gentleman of fifty-six, dressed in black, with broad white neckcloth and shiny leather shoes, whose sweet grave face smiles a kindly welcome to him. He is seated in the centre of a formal semicircle, where he presides in state, the "Anointed Ones" and the holy sisters, according to rank, sitting on each side of their lord, who seems rapt in his own dreams.

There are sixty souls in the "Abode," he tells Dixon, and it is God's will that they shall be saved, and all beyond its walls lost for ever. They are saved, he repeats, and will not die. He himself was assured that he will not die, though he acknowledged that death had occurred at Spaxton owing, as he thought, to some error in the way of life of the deceased.

A child toddles across the lawn. Hepworth Dixon looks at it with smiling interest. "Satan's offspring! the triumphs of the devil!" said Brother Thomas, with emotion, thinking perchance of his own child, from whom the doctrines of the "Beloved" had separated him for ever.

But there was certainly a little child at Spaxton, and there were menservants and maidservants and wine and good food and horses and carriages and hot-houses and pleasure-grounds and all the amenities of a pleasant country house. The Agapemonites had a certain amount of common sense and human nature in their disposition after all.

Prince, the deathless founder of this wonderful sect, grievously upset his followers by joining the majority on March 8th, 1899. But they were a plucky crowd and refused to be daunted. So they elected the Rev. T. H. Smyth Pigott as his successor, but he in turn has passed away.

## CHAPTER SIX

### CONCERNING FARCE

1. MRS. FOXBY.    2. THE TENPENNY.    3. PIGOTT.
4. WHISTLER *v.* RUSKIN

FOR a lawyer to speak of farce in connection with litigation and trials savours of contempt of court. Yet there are cynical publicists and merry journalists who persist in presenting to the world all litigation as a pickle-herring farce, in which the parties are humorously ruined that cannibal lawyers may feast on their remains. At such extravagant heresies my orthodoxy revolts.

At the same time I cannot deny that there are aspects of cases tried in the courts which have in them the true essence of farce. Farce, I take it, is an entertainment whose chief interest is to move the onlooker to uncontrollable laughter, to poke healthy if extravagant ridicule at absurd people, to exhibit human beings in nonsensical positions and to entangle them in adventures of blundering tomfoolery and piteous mischance.

Do not forget that, but for the extravagance of the business and its native imbecility, a good farce would draw tears to your eyes, since the woes of the hero are the best part of it and must be as real and logical as they are preposterous. This is why nearly all farces are written round male actors, for an audience would not be moved to laughter at the

cruel adventures of lovely woman—*aliter* perhaps of the plain and middle-aged spinster aunt variety.

It is this touch of cruelty in farce that makes it so human and yet inhuman. The clown, with his red-hot poker—a repetition perhaps of the medieval devil—is typical of all farce, and the aspect of cruelty and the herd instinct of the audience, emptying their lungs of laughter over the comic miseries of their victim, is present at all legal farces.

The spirit of farce in the stories of Mrs. Foxby and the Tenpenny consists in impudence outwitting the dignity of the law. Pigott, as comic actor, literally convulsed a crowded court with the wildest outbursts of laughter, yet beneath his buffoonery the seeds of tragedy were already sown. In Whistler *v.* Ruskin you have the law lending itself to a farcical contest of the most delightful absurdity to the world at large, some of the dialogue of which is worthy of Sheridan at his best.

In each of these legal dramas the farce springs from the unerring human instinct that finds food for boisterous laughter in the folly and misfortunes of absurd people.

# 1. MRS. FOXBY

An amateur. Granted. But what self-effacement; what super-modesty!

It was in the first year of the reign of Good Queen Anne that Mrs. Foxby was indicted for being a "common scold" at the Maidstone Quarter Sessions. She was found guilty and ordered to be ducked. I read in a modern law book the other day that it is still an offence to be a common scold, and that the proper punishment is to place the culprit in a certain engine of correction known as a ducking stool.

It seems to be the peculiar privilege of woman to be a "common scold." The offence is legally of the feminine gender. A man may be a common bore, of course, but this, though a nuisance, is not an indictable nuisance. Moreover, occasional and spasmodic scolding does not count; even marital nagging, which a great lawyer has defined as "the continued reiteration of unpleasant truths," would not be sufficient to support an indictment. To entitle a lady to be carried to the ducking stool she must have attained public notoriety for the abuse of language and the strength and power of the tongue.

What the actual evidence was against Mrs. Foxby history does not record, but she was duly convicted, and the good people of Maidstone looked forward to the free entertainment of seeing the lady carried to the chair and dipped into the Medway as many times as the Sheriff's officer thought desirable.

Spectacular effects like these were very dear to our ancestors, who understood and enjoyed to the full these jolly endings to a legal drama. There is less colour and movement in the legal drama of to-day, but in the good old times the judicial impresario knew how to cater for public entertainment. There were cunning managers in the legal theatrical business who knew what the public wanted and gave it to them.

How little remains nowadays of splendour and glory in the mounting of legal drama! True, our judges still dress up in different coloured robes and honour rascality with royal red and erminous tippets, and assume a black cap at the solemn sentence of death.

When they play in the provinces, too, and "go circuit," as the phrase is, they mingle the legitimate

with popular circus effects akin to the Lord Mayor's Show. They have a gilt coach to ride in, with four prancing circus horses ; a sheriff, with a cocked hat and feathers, to take them to court ; a sleek chaplain, in gown and bands, to say grace for them at dinner ; trumpeters to herald them, and javelin men dressed like beefeaters to keep back the gaping and delighted mob.

It was Falkner Blair who, when taking some ladies round the Manchester Assize Courts, came across a number of the javelin spears resting against the wall during the luncheon hour, and replied to their questions as to the use of these weapons : " My dear ladies, very few people really know, but those are what the judge charges the grand jury with."

Our forefathers not only dressed their judicial characters bravely in red and gold and powdered wigs, but they took care that every legal drama should wind up with a splendid spectacular show to delight the simple, pleasure-loving mob.

Wednesday was a great holiday in London in the days of good Queen Anne. There was generally a procession on that day to Tyburn and a few executions there. You might take up your stand at Newgate and see the prisoners put in their carts with their coffins, or you could meet the dismal procession at St. Sepulchre's, where friends of the leading actors threw them nosebags as they do on the last night of any other play.

It was a free show. There was nothing to pay and no entertainment tax. The streets were full of barrow and stands for the sale of gin and gingerbread and nuts and apples, and ballad-mongers singing a last lament, and boys shouting broadsides containing the last dying speech, which some starving author had written in a Grub Street garret.

Wednesday was a right jolly holiday for the London mob in those days, and then how edifying it was—at least, the judges and the clergy said so, and they ought to know.

But if you had no stomach “to see a man swing at the end of a string,” there were lots of minor entertainments of a similar character. You could go to Bridewell, for instance, and see the women whipped by the men in blue, and watch the old alderman poising his hammer in the air, and the wretches crying out, “Knock, good Sir Robert, knock!” for when the hammer fell their torture came to an end.

That was real sport and a fashionable spectacle that everyone went to see. And, of course, there were often jolly sights to see in the streets when men and women were whipped at the cart’s tail or put in the pillory. So that, when you come to think of it, there was a lot of first-class free theatrical entertainment of a spectacular character for the fortunate Londoner, and legal drama of that sort was exceedingly well put on.

In the country towns, of course, there was less fun going on. No doubt the good folk at Maidstone turned out on occasion when there were culprits in the stocks to torment, or vagrants tied up to the whipping-post. The magistrates at quarter sessions did their best to provide what entertainment they could, and so intent were they on providing suitable amusement for the people that they took care that there should be no alternative fine or imprisonment for Mrs. Foxby, and she was sentenced to a ducking and nothing but a ducking.

You may find ducking stools in one or two county museums. Some are on wheels, so that you can run them down to the edge of the river at a



convenient place, where the populace can sit on the banks and hang over the bridge and see all the fun of the fair. Others are fixtures at the edge of the village pond, and these had to be padlocked, for the children used to play at ducking each other, and their little dramas sometimes ended in disaster.

Mrs. Foxby was not only a "common scold"; she was one of those advanced women who cause a lot of trouble in their generation by refusing to accept the laws and customs of the country they live in in a proper and submissive spirit.

I gather also from the report of her case that she had money to spend in legal proceedings; otherwise, had she been a poor woman, she would have been ducked and done for without delay. Mrs. Foxby was determined not to be ducked if she could avoid the ceremony, and she instructed her solicitor to move in arrest of judgment in London. The point her lawyers raised was that the prosecution had called her by the wrong Latin word for "scold" in the indictment.

This motion came on for hearing in Trinity Term, 1702, and judgment was arrested until Michaelmas; but Chief Justice Holt seemed to think that ducking would be the end of it, for he pleasantly reminded her counsel that ducking in Trinity Term would be less irksome than at Michaelmas.

In order to get rid of the punishment altogether Mrs. Foxby had now to get a warrant from the Attorney-General and bring a writ of error to quash the indictment. Meanwhile the Sheriff let her out on bail.

The lady now took to her bed and called in doctors to make affidavits, and there were several hearings before the courts, the judges insisting that Mrs. Foxby must appear in person. The law of

scolds was solemnly discussed and so was the penalty of ducking.

The Chief Justice, perhaps with a knowledge of the chalky nature of Kentish soil, thought the waters of the Medway might harden the lady. One judge expressed doubts about the legality of ducking, but that idea was not pressed. They all seemed to think that a common scold must be ducked by English law, as long as you called her by the right Latin name in the indictment. And the farce of this case was not the slap-bang knock-about of the ducking stool but the punning quibbles of the pedantic legal dramatist.

Personally, I enjoy pulling down these old forgotten volumes of law reports and ambling along the paths of judicial wisdom, considering thoughtfully whether a common scold is to be called *communis rixa* or *rixatrix* or *calumniatrix*. It must have been a pleasant way of earning your living to get fees and refreshers for talking through your wig about such utterly futile propositions. But one has to treat these farcical points seriously even in an up-to-date legal drama of to-day.

It took twelve months to decide Mrs. Foxby's point, but ultimately the court decided in her favour, the indictment was quashed, and the good folk of Maidstone were done out of their entertainment.

I have no reply to those who say she was a selfish woman and wanting in public spirit. But there is another aspect of this legal drama which is worth a moment's thought. This law of "common scolds" and the punishment of ducking women was a survival of those ancient man-made laws which regarded woman as a chattel, to be sold or beaten or treated as a thing, rather than a person, at the pleasure of man.

Mrs. Foxby would not play the spectacular rôle assigned to her, because she wished to play the heroine in the greater problem drama of the evolution of woman's freedom. And she succeeded. I cannot find a later case in the books about a "common scold," and the attention called by Mrs. Foxby to the matter, and the gentle raillery of the Lord Chief Justice, may have convinced the age of reason that these proceedings were even then already obsolete, or, in other words, that the law in these cases was a worn-out farce.

I am glad Mrs. Foxby won her case, but I am sorry for the inevitable disappointment of the Maidstone audience waiting on the banks of the Medway.

## 2. THE TENPENNY

The dramatic theme of this farce is a very old one. Persecuted humanity, insolently spurned and bullied by authority, breaks out in rebellion. There is a revolution. The aristocracy of Whitehall receives a rude buffet from one of its lackeys, the complacency of the gods is rudely disturbed, they run whining to the police and claim the protection of the law only to find that they have omitted to make or provide any law for their own protection against their own negligence. The magistrate waves the prisoner aside with a bland smile. The world chuckles aloud. The tame bureaucratic fowl flutter their wings and run away to tell the King the sky is falling, and, as no one is a penny the worse when the curtain falls, the audience walk home well pleased with an afternoon's amusement at Bow Street. Once again the Press beats bureaucracy at its own child's game of hide and seek.

Many readers will remember Charles Marvin, the

hero of this little farce, as a sage publicist and writer on the affairs of Europe and Central Asia. His early struggles, the sordid romance of his youth in London, and the memory of his encounter with the law are long forgotten in admiration of his brilliant books about Russia and the East.

You must picture him in your mind as a sort of Copperfield. He is working as a lad in a warehouse in Watling Street. Then, at the age of sixteen, he joins his father, who is an assistant engineer in Russia. In Russia he travels many thousand miles, visiting all the great cities. He learns to speak and read the language like an educated Russian, studies and becomes an expert in other European tongues, and after six years he returns to England in 1875 equipped with a knowledge and experience of Russian affairs that few Englishmen possess. He has already been a correspondent of the *Globe* newspaper, and he looks forward with some justification to obtaining a place in the Civil Service of his country, where his knowledge of languages and foreign affairs might be useful.

It was a time of great hope for aspirants to the Civil Service, which, through patronage and jobbery, had well deserved Charles Dickens' vivid genre picture of the Circumlocution Office. But new notions had been put into men's minds by the facile promises of politicians. Gladstone, bareheaded, pale and resolute, had mounted a tub in Blackheath, and announced to the cheering mob the joyful news that henceforth patronage, jobbery and favouritism were swept away and a new era had dawned in Whitehall: any son of an Englishman could now compete for public employment irrespective of the question of his condition in life or the amount of means with which he might be endowed. These

glad tidings had reached Marvin's ears. His educational equipment was of a far higher standard than that of the general Civil Servant, but he had neither money nor influence. Nevertheless, he had hope and a simple belief in Gladstonian eloquence. Full of dreams of a glorious public career he presented himself for examination at Cannon Row.

Here he found a ragged army of lads fresh from school and clerks out of place, but everything must have a beginning, and he remembered that Gladstone had told him that henceforth the Civil Service was "the property of the nation," so he planked down the five shillings that Cannon Row demanded to satisfy the Treasury thirst for fees and passed with ease an elementary examination. He then presented his testimonials and medical certificate, and on January 10th, 1876, became a full-fledged Civil Service writer. That was indeed a fateful day for Russia and England, Salisbury and Schouvaloff!

Our young hero was now part of "the property of the nation," and as such he was entitled to tenpence an hour by way of remuneration, and was therefore known in the slang of the service as a "Tenpenny." "Tenpennies," or temporary writers, were sent out to such Departments as required them: Marvin's first job was at the Customs House. Here, in a dirty low-pitched room on the fourth story of a house in Thames Street, he added up entries in export books amid the amenities of Billingsgate.

He soon found that promotion by merit, so glibly promised on the hustings by the "old man eloquent," had not yet been put into practice in Thames Street. The clerks at higher salaries did much the same work that he did. They set the stroke at which the work was to be done, and woe

came to him who desired to increase the pace. A "Tenpenny," he discovered, would always remain a "Tenpenny." He was a month or two too old to pass a second-class examination, and could not even aspire to be a thirty-shilling-a-week permanent writer. Kindly but firmly the head of the Department told him that no service, however prolonged, would give him any claim on the office, and he had no prospects of promotion. That was the truth and the whole truth of the Gladstonian perorations.

And now we must imagine an ardent young soul embittered by the irony and cruelty of official affairs. It must be confessed that Marvin's attitude towards the Service, though philosophic, was not quixotic. He was not endowed with the spirit that humbly turns the cheek to the smiter. On the contrary, he was full of that turbulent egotism that delights in tapping the smiter on any knob of his anatomy that he leaves unprotected.

The work was child's play to him. He could do in two hours what the average barnacle toiled through in a day. He hated dawdling, so having done five shillings-worth of work in two hours he devoted the rest of his office hours to the study of European politics and the practice of journalism. He hated with loathing and contempt the system of which he was a victim. He saw that writers could not become clerks; clerks, however able, could not obtain promotion but had to wait their turn, for the official rule was that, no matter how imbecile a Civil Servant was, his weight of years carried him along from post to post until he dropped automatically into the pension basket.

To a travelled scholar and man of the world all this seemed exquisitely absurd. He could have laughed



at the farce of it had he not been cast to play a degrading part in the drama. The iron entered into his soul. He cursed the short chain of poverty that fastened him to the office desk. But, as yet, journalism could not feed him, and the tenpences were necessary to his life even at the cost of degradation and hopelessness of his tasks. It was in this frame of mind that, after a transfer from Billingsgate to the Dog Section of Somerset House, Marvin was sent to the Foreign Office.

Here he had more interesting work to do, but the future outlook was no better. He was still a "Tenpenny," drawing £78 a year, with £10 allowance on account of his knowledge of French. And now came the temptation and the great adventure.

This brilliant young man of four-and-twenty was already making a name for himself as a free lance journalist, contributing articles of an expert character on foreign affairs in the East. He had ideas of his own on the subject of foreign policy which were not in accordance with those of Lord Salisbury, our then Foreign Minister.

In May of 1878, Count Peter Schouvaloff was Russian ambassador in England, and he and Lord Salisbury, unknown to the world, were concocting a treaty.

Marvin had a deep hatred of the "Russian Ex-Inquisitor," as he called him, and believed that any treaty made with him would be a bargain to England's dishonour. At this crisis in his life he was called upon by one of his chiefs to copy portions of this new treaty, and was ordered to read over the whole document in order to compare one copy with another. Marvin had studied Stokes' well-known memory system, and by this means memorised not only the portion of the treaty he had

copied but the passages he had read over to his fellow-clerk.

In the office, it must be remembered, this was not called a Secret Treaty. Marvin was told that it would be sent in good time to the papers. His action cannot be defended, but it was not a mean action. He was not prompted by a spirit of levity or greed, but no doubt he was actuated by a desire to expose the folly of his well-paid superiors, as well as to warn the public what was being done for them behind their backs.

His friends of the Press were kind to him and gave him more encouragement than his official superiors. He fully considered the future, and making up his mind that he had had enough of the life of a "Tennepenny," he walked down the Strand to the *Globe* office and handed to the editor a full summary of this astonishing treaty.

When the good work of a Department is brought to light the bureaucrats are often covered with modest confusion and seek to belittle their own good deeds. Like the excellent Mr. Allen they

"with an awkward Shame,  
Do good by stealth and blush to find it Fame."

So was it here, and when Earl Grey in the House of Lords asked whether there was any truth in the summary in the *Globe*, the noble Earl of Salisbury, who had just come away from hobnobbing with Schouvaloff over the tea cups, put his hand upon his heart and assured their Lordships that the statements "were wholly unauthenticated and are not deserving of the confidence of your Lordships' house." I do not fancy this phrase really deceived anybody in the political world. The mere fact that the use of the official jargon, "the answer in

the negative," was departed from made the Tadpoles and Tapers of Westminster nod their heads, shrug their shoulders and wink the other eye.

But our good simple Marvin was intensely annoyed. His honour as a journalist was at stake. Lord Salisbury had charged him with purveying false information. The soul of the man was full of wrath and he was bound to defend his honesty and his livelihood. Accuracy is the chief asset of a journalist, and Marvin felt that he must prove his innocence to his employer. Lord Salisbury could not have foreseen this dilemma when he uttered his unfortunate prevarication. The head of a great Department knows nothing of "Tenpennies," and even if Lord Salisbury had ever heard of this particular "Tenpenny," the notion that he had a soul and would be injured by an official falsehood would never have occurred to his aristocratic mind.

Marvin did not sit down under the insult. He made a complete copy of the treaty and handed it to the *Globe*, providing the world with a high-class political sensation and illustrating to the man in the street the moral value of Departmental Parliamentary statements.

Marvin made no secret of his *coup*. The highly paid heads of the Foreign Office met together and sent for police and lawyers. The former seized his papers and his person and threw him into a verminous cell in King Street, the latter pulled down their law books to prepare an indictment against him.

But, though the power of bureaucracy is great, the power of the Press is also a force in the world. Lying in his unpalatable cell, a friend whispers to him through the door that the *Globe* have hired a

champion to do battle for him by the name of George Lewis, and that bail will be provided. The Crown lawyers get busier than ever over their books when the name of George Lewis is mentioned. They determine to charge Marvin with larceny of the treaty or of the Foreign Office paper on which he wrote his copy. After all, they said, he must have done something—but what?

When the matter is heard, the wise old magistrate, Mr. Vaughan, is clear that no crime has been committed. There was no evidence of larceny, no evidence that Marvin had been warned to secrecy. If you leave these mighty State affairs in the hands of "Tenpennies," what can you expect? Once more Marvin scored an easy victory and at the end of the police court scene the Departmentalists walked off the stage to shouts of contemptuous laughter.

But to thoughtful minds the publication of the worthless treaty and the careless handling of State papers were not the real tragedy in the life story of a "Tenpenny," but the public advertisement of the fact that the system of our Civil Service had no power to assimilate a clever, brilliant young citizen who had neither friends nor the money to secure him the place he deserved, and that the chiefs of the Foreign Office had no appreciation of exceptional ability and not the least desire to retain it for the services of the Empire.

### 3. PIGOTT

Richard Pigott was the demon in a legal pantomime. He was also a clown and a mountebank, convulsing the court with laughter by his foolishness. Forger, liar and thief, this wretched creature, like an evil spirit, poisoned the political atmosphere

of the country for many months, tempting the wiseacres of the world into malicious indiscretions, and bringing the curtain down on a squalid farce with a note of tragedy.

Born in County Meath in 1828, Pigott made a place for himself in Irish journalism. Had he died at fifty he would not have been known as a scoundrel. He owned newspapers, published patriotism, milked the Fenian funds to live luxurious days, ate, drank and entertained extravagantly, was semi-popular, unrespected, tolerated as a useful party man.

Then Parnell came. Having no use for the creature and no pity, he refused to buy him at any price; preferred to destroy him. Boycotted his newspapers, and then bought them cheap and let him go to the devil—which he did.

Downhill he went, struggling to keep in comfort four motherless children whom he adored. Became a hack writer for Government papers, sank lower, drifted into the begging-letter business, sank again to blackmailing, fraud and a vile trade in obscenities.

At the brink of the pit came the greatest temptation of all. Money, luxury for self and children, gratitude of honourable and right honourable politicians and, sweetest of all, revenge on Parnell, if only he would find and produce to them Parnell's correspondence with the Fenians in America.

That it was there to be found, like Eldorado or the Holy Grail, was beyond doubt. He, Pigott, knew it. The right honourables were certain of it. They fill his purse with money, and Richard with a lady friend starts gaily on his quest, travelling France and America full of the joy of life.

Still, even in politics, there comes a day when goods must be delivered. Pigott had taken the measure of his right honourables, recognises their

capacity of self-deception and fools them to the top of their bent with black bags, in Paris, stuffed with incriminating documents, and mystery men waiting for heavy bribes.

More money passes. Pigott hands letters of Parnell to one Houston, a political personage, and on April 18th, 1887, *The Times* startles the world with a facsimile letter of Parnell, in which he is made to write: "Though I regret the accident of Lord F. Cavendish's death, I cannot refuse to admit that Burke got no more than his deserts."

The world stands amazed. It is unthinkable that *The Times* should publish a forgery and hardly thinkable that Parnell should be among the murderers. Liberals grovel and growl. Unionists galumph around. The political atmosphere crackles with electrical excitement.

Parnell remains calm, strolls down to the House in the evening, having heard nothing of the business, looks at *The Times* in the library, shakes his head, remarks to Tim Harrington that he "never made an S like this since 1879," and dismisses the matter with contempt.

Not so the man in the street, who is puzzled at Parnell's indifference and left cold by his denials, thinking that if a man would approve murder he would deny anything. Moreover, was it not in *The Times*? So, for a year and more, the world remains in doubt, but deeply stirred, wondering what is the truth of this Parnell letter.

At length the Drama of the Law begins. The curtain goes up, "discovering" Justices Hannen, Day and Smith, a Commission to inquire into Parnellism and Crime. Webster and Henry James, Russell and Asquith champion the two causes. They begin drearily enough with old tales of Irish



politics. To the public all this is but a curtain raiser. The real drama is the truth and falsehood of the letter.

Rumour has it that Sir Richard Webster is funkng the issue of the letter. Labby's name occurs in club conversations. George Lewis, Parnell's solicitor, is said to be "on clover" by knowing ones who know nothing. There are even a few who have heard stories about a man named Pigott.

Not until the fiftieth day does the play begin.

Enter Mr. Soames, solicitor to *The Times*. The buzz of conversation is hushed, and is not heard again for many a day. Soames produces the letter, but knows nothing of its origin. He had it from Macdonald, *The Times* manager, who had it from Houston, who had it from one Richard Pigott, to whom large sums were paid. He had trusted in these men.

Enter then Macdonald, the business man, proud of his journalistic scoop. But inquiries? No! He had trusted in Houston and the good Pigott.

Enter now Houston, political official. Surely he will know something more? He tells a thrilling story of a meeting with Pigott at an hotel in the Avenue de l'Opéra. There are men downstairs, with a black bag and letters in it, waiting for gold, which is paid over. But, alas! he himself saw no one but the excellent Pigott, in whom everyone has faith.

At last, on the afternoon of the fifty-third day, the real hero of the drama enters the box. A comic figure enough. Short and stout, round-shouldered, shiny bald head, plenty of white whiskers, fleshy features, eyes wide apart, and an eyeglass screwed into one of them. Benevolent-looking and elderly, "like a church deacon," says a spectator.

Webster leads him gingerly through biographical details, travels in France and America in search of letters, discovery of same, sale to *The Times* for over a thousand pounds and expenses. Then he discloses to a breathless audience meetings with Labouchere, Parnell and George Lewis. Pigott's story is that these men tried to bribe him to say he had swindled *The Times*, but his virtue was adamant. So absurd are his statements and so obvious his lies that the audience rock with laughter at them. The President intervenes with rebuke—Pigott smiles uneasily, Sir Richard Webster is glad to sit down.

Sir Charles Russell stands upright before this puffy, ridiculous person. For weeks the great advocate had been waiting, nervous and irritable, for this moment. He has ammunition enough, perhaps, but will it hit or miss?

He holds out to Pigott a clean sheet of paper. Invites him to be seated. Asks him to write several words which might have significance, and then, as an afterthought: "Lower down, please, leaving spaces, write the word 'hesitancy'—with a small 'h.'" Pigott wrote.

Russell took the paper and looked at it. He knew then that Pigott was the forger. For in one of the forged letters "hesitancy" had been written "hesitency," and again Pigott had made the same blunder.

Russell had lost all nervousness and irritability. He dived into the armoury that George Lewis had provided, and with the marvellous skill of a great cross-examiner dragged out of the lying wretch bit by bit the truth of his crimes. He holds up the witness to his employers, his advocates, the audience, the court, and the listening world of England and

America, and gibbets him as liar, forger and black-mailer. His listeners almost pity the dazed, bewildered wretch who wanders about aimlessly in a maze of falsehood of his own building.

On the next day it is driven further home. He is told in detail how he forged the letters, tracing actual phrases in genuine letters. He denies it uneasily, shuffling about in the box, grimy, clammy and pale. A whole series of begging and black-mailing letters written to Archbishop Walsh and Mr. Forster, Irish Secretary, is put to him. The poor wretch stands helpless, confused, incapable of coherent answers.

Bursts of merriment followed the outrageous lies of his letters and the folly of his explanations. When, in a last blackmailing letter to Forster, begging for £200 with which to emigrate, he tries a note of pity: "I feel this is my last chance, and if this fails only the grave and the workhouse remain," a loud roar of laughter stopped the proceedings, and it is recorded that even Mr. Justice Day bent forward shaking over his desk.

Sweet are the uses of cross-examination. The court adjourns. The man who had deceived the world for two years and lived bravely on the proceeds of his infamy slinks out of the box stripped of every rag of character and reputation and known to the world as a villain.

This was on Monday night. The court did not meet again until Tuesday.

It is a full house, packed to suffocation. The judges take their seats. Sir Charles Russell is waiting like a greyhound in the slips. But the hare? There is a silence of moments. The President looks at Sir Richard Webster, who consults his colleagues. Then he rises and mumbles a few words which are

but ill-heard. The sport is over. There is no hare. The witness has fled. The farce is over. But not the drama. The curtain rises again on two scenes of tragedy.

In the hall of the Hôtel des Ambassadeurs in Madrid the hotel interpreter tells a stout, florid Englishman, who has just come in from a visit to the museum, that the police are waiting to see him. He will be with them in a moment. He slowly climbs the stairs of the hotel, muttering prayers. He enters his room and locks the door. A shot is heard. Richard Pigott is dead.

And another scene. On the floor of a cheerful nursery at Kingstown four little children are playing with little toy yachts and tricycles. A good house-keeper hears the boys shouting the news in the street. She looks in pity and dismay at the orphan children, and buries her face in her hands.

#### 4. WHISTLER *v.* RUSKIN

You may regard the trial of Whistler *v.* Ruskin, which took place in the old Westminster Courts in 1877, as a personal duel between two angry men, or the clash of eternal principles voiced by apostle antagonists, or merely a society farce that amused the quidnuncs and gossips of the West End clubs. But at least it revealed for the first time to a larger world the strange personality of James Abbott McNeill Whistler.

And in spite of the evil passions it aroused in the combatants at the moment, I can well believe that, somewhere in the shades on the far shore of the River Acheron, Whistler and Ruskin are laughing together in friendly fashion over the insane folly that lured them into the indiscretion of litigation. For, indeed, in the world of art they should have

been true brothers, like Castor and Pollux setting forth hand in hand to find the Golden Fleece.

It must have been some tricky spirit of mischief that filled their hearts with hate and fury and set them on to buffeting each other with bigwigs. Many such quarrels seem to arise from a different quality of humour in the opponents. You cannot expect a churchwarden to chum with a harlequin, though each may be intensely interested in some common pursuit. In this way Gladstone and Disraeli were as oil and vinegar to each other, though each was a Statesman of high ideals. To Ruskin art was the most serious thing in the world, after the Protestant religion, and he had spent his life preaching his gospel of art. Whistler rightly symbolised himself as a butterfly. But he could *do* things that Ruskin could only write about.

Ruskin, in 1877, was at the height of his fame and authority as an art critic. He was the only son of a well-to-do and entirely honest merchant, brought up in wealth and comfort and allowed to devote himself from early Oxford days to the study and criticism of art. Now, at the age of fifty-eight, he was regarded by the British public as a writer of apostolic authority, and when vexed by the follies of the age he wielded his pen with savage freedom in denouncing anything that did not at the moment meet with his approval. He was in all things a violent partisan, and was not endowed with the judicial temperament.

The fame of Whistler was something quite otherwise. Thanks to his own eccentric conduct he was known to the world at large as a mountebank artist who painted incomprehensible pictures, which he perversely called "nocturnes," or "arrangements," in divers colours. Many of his own craft recog-

nised the wonderful colour of these pictures and their grace and beauty. Among a young generation of students, a somewhat crazy and unbalanced set, Whistler was worshipped as "The Master," and in his capricious fashion Whistler allowed these youngsters to air their follies in his train, earning thereby the contemptuous laughter of the outer world. To the mind of the contemporary Philistine the legends about "The Master" pictured him as a kind of modern Mephistopheles.

His everyday appearance in the streets of Chelsea and such public galleries as he occasionally attended made the stodgy British public distrust the man. He looked like a Svengali or a Daniel Dunglas Home, and rather rejoiced to exaggerate his romantic exterior. He was proud of his great mass of black curly hair, with the uncanny effect of the famous white lock flaunting over his brow. He was daintily particular about his clothes, wearing strange-shaped hats and a long overcoat, and carrying in his yellow-gloved hand a slim wand for a cane. He was a picturesque figure, and he knew it, and like a festive child was pleased to attract attention in the streets, though to his disciples he grumbled at the manners of the mob. He was to the last an aggressive American, out of sympathy with the country of his adoption, mischievously bent on confusing the stolid British citizen and angering him with an impudent stare of contempt through his characteristic monocle.

This was the Whistler he gave to the world, but there was a real Whistler who was a very different character, and if, as nearly occurred, Ruskin had met this other personality at the house of a mutual friend, this lawsuit might never have happened. Whistler was a kindhearted man to the rare few



that were honoured by his friendship, but he was swayed by a childlike jealousy and could not accept anything but the most wholehearted fealty. Like Ruskin himself he was a great lover of little children, and both men were devoted sons of their adoring mothers. Each has used his art to express his adoration. Ruskin has left us a pen portrait of his mother in "Praeterita," and Whistler immortalised his mother under the cold unfilial title of "Arrangement in Grey and Black."

Whistler himself acknowledged in his later days that he had made a practice in surroundings of antagonism of wrapping himself for protection in an atmosphere of misunderstanding. With strange caprice he chose to display himself to the world as a scatter-brained eccentric, with a rare power of uttering sardonic witticisms about the commonplace citizens among whom he lived. He could hardly expect them to love him.

Bearing all this in mind, it cannot be wondered at that the journalist art critics were not very friendly to "The Master." They were not as a rule men of very expert knowledge, and Whistler revenged himself handsomely by printing their dissertations of his art in a catalogue that is now of some value.

Here we find that when he gave an exhibition it was called "another crop of Mr. Whistler's little jokes." His paintings were "beyond the understanding of any ordinary mortal," they were "eminently vulgar," and it was a mild thing to say of him that he was an artist "of incomplete performance." But Ruskin went further than any of the others. At the opening of the Grosvenor Gallery by Sir Coutts Lindsay, Ruskin sat down and wrote in a paper called *Fors Clavigera*, a periodical supposed to be addressed to working men readers, and not in

any sense an art journal, that Sir Coutts "ought not to have admitted works into the gallery in which the ill-educated conceit of the artist so nearly approached the aspect of wilful imposture. I have seen and heard much of Cockney impudence before now, but never expected to hear a coxcomb ask two hundred guineas for flinging a pot of paint in the public's face."

The picture referred to was the "Falling Rocket at Cremorne Gardens," and this and other nocturnes, which were so eloquently derided by the critics, are now acclaimed as masterpieces of the highest merit, and hang in dignity in national collections alongside the work of the great masters of all ages.

Ruskin's outburst was unfortunately copied into many popular newspapers, and when Whistler's attention was called to it he at once went off to his lawyers and directed them to serve a writ on Mr. Ruskin, claiming damages for libel. As Oscar Wilde said at that period, "Popularity is the only insult that has not yet been offered to Mr. Whistler," but the artist was not averse to seeking it, and in his heart of hearts by no means despised popular applause, and this libel action was an endeavour to put his ideals of art before a larger public than he had yet attracted. It was easy for the artist to say to his friends that abuse was "the only tribute possible from the mob to 'The Master'!" but it was very human to desire to get damages from one of the mob.

My father, Serjeant Parry, appeared for Whistler, and Sir John Holker, then Attorney-General, was for Ruskin, who, fortunately for himself perhaps, was too ill to attend the trial. I remember my father, after a dinner at Whistler's famous "White House," given just before the trial, declaring that

they were waited upon by bailiffs, and that he feared his client's eccentricity would make it difficult for him to get a verdict.

But though it was never possible that any advocate could persuade a jury to give heavy damages, that was not Whistler's object. He wanted to have a field-day to exploit his personality and ideals, and he certainly scored a triumph.

The Attorney-General perhaps intended Whistler to betray his extravagances to the jury, as Buzfuz hoped to do with Sam Weller, but history repeated itself, and the witness was the victor.

"How long," asked Sir John, "did it take you to knock off that nocturne?"

"About two days perhaps," replied the artist.

"Oh, two days! The labour of two days, then, is that for which you ask two hundred guineas?"

"No; I ask it for the knowledge of a lifetime."

There you have one of those brilliant impromptus which followers of "The Master" boasted of and sometimes used as their own. It was a crushing reply to a fellow-man of art who was sitting with a hundred-guinea brief in front of him "knocking off" a day's work.

But his final blow to Holker left him dead upon the field. The advocate asked him: "Do you think now that you could make *me* see the beauty of that picture?"

Whistler gazed at the picture and the Attorney-General attentively several times, scanning his face carefully. At the end of a long silence he said with judicial gravity: "I fear it would be as hopeless as for a musician to pour his notes into the ear of a deaf man." Such was the clash of wit in the dialogue of the legal farce.

The end of the trial was a farthing damages for Whistler, which his friends considered a triumph, as it had been generally expected that Ruskin would win the day. Although it was the prelude to Whistler's bankruptcy, yet the artist, with youthful optimism, took no thought for the morrow, but celebrated his triumph with his friends and sat down to make his opponents famous in a volume of pleasantry, entitled *The Gentle Art of Making Enemies*.

Frith, the painter of the "Derby Day," who gave evidence for Ruskin in the case, had happened to say in a reminiscent after-dinner speech that "It was just a toss-up whether I became an artist or an auctioneer." To which Whistler added the consoling reflection: "Ha! He must have tossed up." About Ruskin himself Whistler was unrestrainedly witty and contemptuous. When Ruskin's friends reminded him that he was a "Slade Professor" and a lifelong student of pictures, he replied: "It suffices not, Messieurs! A life passed among pictures makes not a painter, else the policeman in the National Gallery might assert himself." Moreover he declared that Ruskin's views on Titian were uttered with "a verbosity and flow of language that would, could he hear it, give Titian the same shock of surprise that was Balaam's when the first great critic proffered his [*sic*] opinion." Here he laid himself open to the rejoinder that though Balaam's critic may have been an ass, the lady was undoubtedly in the right with her criticism.

It is fair to remember that Whistler was a true wit, and was just as pleased to score off a friend or a customer as over an opponent. When he had finished a portrait of a well-known celebrity he asked him whether he liked it.

"No, I can't say I do, Mr. Whistler, and you must really admit it's a bad work of art."

"Yes," replied the artist, looking at his sitter through his monocle, "but then you must admit that you are a bad work of nature."

All his sayings must be taken *cum grano*. A solemn artist discussing the question of flat tones in painting was horrified to hear Whistler say: "House painters have the right idea about painting. God bless them!" Again to the lady who came to him, gushing with enthusiasm, crying out: "Oh, Mr. Whistler, I have just been up the river, and it reminded me of your pictures," he smiled enigmatically, saying: "Indeed! then nature is looking up." It was because Ruskin heard these anecdotes at second-hand and had not the sense of humour to dissolve the acid in them that he shouted out, "Coxcomb!" when he should have praised them as the natural dialogue of a really witty mind.

But though these two immortals played their foolish farce like other citizens of common clay, we who knew them and mourn their loss can say that both of them were lovely and pleasant in their lives, and believe that in their death they were not divided.

## CHAPTER SEVEN

### CONCERNING MELODRAMA THE TICHBORNE TRIAL

1. THE MYSTERY.    2. THE RETURN OF THE  
PRODIGAL.    3. ARTHUR ORTON

MELODRAMA is the favourite repast of the common playgoer. By melodrama we no longer mean plays interspersed with melodies and music, but strongly accented drama, with exciting plot and sensational passages wherein common characters are involved in romantic incidents, innocence is endangered, evil seems to prosper, and violent appeals are shouted to tense emotions until it is time for the curtain to fall on a happy ending. A story of unusual domestic calamity, with hero and heroine poised dangerously on the brink of moral and other precipices, terminating in married happiness and financial prosperity, touches a chord on the frayed strings of every human heart.

Most honest playgoers really prefer *Proof*, or *The Silver King*, or *The Lyons Mail*, or *The Corsican Brothers* to *Lear*, or *Macbeth*, and do not willingly spare a night off for *Justice*, or *Major Barbara*, or *The Wild Duck*. After the drudgery of the day's work there is no anodyne like a good melodrama. In fact, it is probably the basic melodrama in all great plays that keeps them alive. Shakespeare, we may suppose, knew all about this human frailty



of ours and founded his plays upon a melodramatic story. So, if you will, you can enjoy *Hamlet* as the capital melodrama it is without worrying your mind over the problems that modern highbrows, both on the stage and off it, have read into the text of the playwright. The play is still the thing, and the play is a melodrama at heart.

The law courts are in the nature of things full of melodramas. Novelists and playwrights ransack the law reports for sensational copy, and too often caricature a legal drama in their endeavour to add unnecessary violet to the natural beauty of the legal flower. *East Lynne* is rightly as favourite a melodrama with the public as *Hamlet* itself, and has played in its day perhaps to as much money, but are either of these box-office favourites more sensational and extravagant in plot than the true story of the Tichborne Trial, which I take to be the noblest melodrama ever produced on the stage of our English law courts, and the ending of it is essentially a happy one, since virtue triumphs and villainy is defeated.

## I. THE MYSTERY

If Boucicault or Mrs. Henry Wood had invented the Tichborne case they would have produced their drama or romance in three acts or volumes with some such titles as these :

- I. The Lost Heir.
- II. Back from the Beyond.
- III. The Day of Reckoning.

For, as Julius Cæsar remarked about Gaul, the Tichborne case divides itself into three parts, and I have found it necessary to tell the tale in triplicate.

My father, Serjeant Parry, appeared for the prosecution in the criminal trial, and I spent several

days in court—some of them rather weary ones, I fancy. To taste the full flavour of the Tichborne romance you must not only pull down many heavy folios of evidence and burrow in dusty files, but picture for yourself the crowded musty court, the heavy obese figure of the Claimant sitting in the well in front of the irascible whiskered Doctor Kenealy, with the alert suave personality of Hawkins, Q.C., dominating the scene.

To me it seems almost impious to peptonise so great a mass of legal pabulum and present it in tabloid scenes. But in this cinema world of ours it is the only way.

The prologue is of necessity domestic. The atmosphere of the first act is aristocratic. The characters are from the pages of Thackeray and Meredith and move with ease and dignity among the landed gentry of Hampshire, the households of Belgravia and the English circle in Paris.

Roger Charles Tichborne was born in Paris on the 5th January, 1829. He was the elder of two sons of Mr. James Francis Tichborne and Henriette Félicité—a name her long-lost son completely forgot—who was a natural daughter of Mr. Seymour, of Knoyle House, Wiltshire.

Mr. James Francis Tichborne succeeded his elder brother, Sir Edward Doughty, in 1853. He took the baronetcy of Tichborne and the large and strictly entailed estates in Hampshire and elsewhere, known as the Tichborne and Doughty estates. Tichborne Park, the family seat, was at Alresford, in Hampshire, and there was a second house at Upton, near Poole, in Dorsetshire. Sir James Francis Tichborne died in 1862. His son, Roger, having disappeared in 1854, and being presumed to be dead, the second son, Alfred, succeeded. He

died in 1866, and his infant son succeeded him in the baronetcy and to the estates. To these, if Roger were living, Alfred and his infant son had of course no title or right of possession. Was Roger living? That is the mystery!

At the time of Roger's birth his father and mother resided in Paris. They were strict Roman Catholics and Roger was educated in this religion. When he was about six years old he had a tutor, Monsieur Chatillon, who came to his father's house in the Rue Cromartin and taught him French and writing and arithmetic and took him to his dancing class and his riding school. The boy chattered to him in French and was brought up in the style of a little French gentleman rather than as an English lad. He was kept much at his mother's apron strings and had other tutors, M. Jolivet and M. Courcet, and there was a friend of his parents, the Abbé Salis, to whom the young fellow was greatly attached. Nor must we forget Father Le Fèvre, who prepared him for his first communion and received his first confession and was his sole confessor whilst he was in Paris, and who received Roger's last confession only a few days before he left on his travels to South America in 1853.

This French life continued until he was sixteen, when his father determined to send him to Stonyhurst. Unfortunately Mr. James and his wife did not live very happily together. She was an eccentric woman and strongly opposed her son's being sent to England. She fidgeted about his health and wished to keep him near her. It may have been an amiable weakness on her part, but it led to the son's affairs being a bone of contention between the parents, and for a year after he left her she showed her resentment by never writing to him.

Stonyhurst is a great English school with noble traditions. One may describe it in a phrase as the Eton of Catholic England. Roger was not a very industrious boy, but in the three years of his residence there he learned some Latin and Greek and Euclid, and attended chemistry lectures and of course took part in the religious practices which are the foundation of the school life.

How far can the memory of one's school-days wholly pass away from one's mind? That is a psychological problem every man can solve for himself. Roger Tichborne should have had happy recollections of summer evenings spent fishing on the banks of the Hodder and the Ribble, of triumphs won in school theatricals, and of that wigwam which he built across the meadows, to which he used to retire to smoke until a watchful master caught him at it and he was dealt with according to the statute in that case made and provided.

When he left Stonyhurst he entered the larger world as a young man of good social position. He visited Knoyle House, the seat of his father and mother, Tichborne House, where his Aunt Doughty and his uncle, Sir Edward, were always ready to receive him, and here he made his home. He visited the country people of Hampshire, took part in county sports, and was elected to the Army and Navy Club and the Alfred Club in London.

For now, in 1849, he had determined to join the Army. He went to Sandhurst and passed an examination which does not seem to have been a very strenuous ordeal. In those days the heir to a baronetcy who was also a young man of means had his paths towards military glory made reasonably easy for him. He got his commission in July, and

studied for a second examination at his grandfather's house in Upper Grosvenor Street. At this time he seems to have seen a good deal of Vincent Gosford, an old and trusted agent of the Tichborne family, to whom he looked up with confidence and respect.

Tichborne House had become a home to him. From his aunt, Lady Doughty, he received more affectionate sympathy than he had ever had from his own mother, and there was Cousin Kate, a beautiful girl of fifteen—for him the prettiest Kate in Christendom—with whom the young fellow naturally and properly fell over head and ears in love. There is a pretty picture in the dull pages of the report of the trial where the stalwart young officer, who was ordered to join his regiment, the Carabineers, or 6th Dragoon Guards, runs down to Tichborne to say farewell to his aunt, not forgetting Cousin Kate, and appears in his new uniform, at the dinner table, for the first time of wearing, to the pride and delight of the dear ladies. These are pleasant memories of youth, not lightly lost, one would think, even in the wilds of Australia.

The life of an English officer stationed in Ireland in the 'forties was a pleasant social affair for a young man of means and position. True, his brother officers ragged him a little about his Frenchified ways. It was the age of the "darned Mounseer," and the two nations had not tasted of that elixir of peace and good-will—the *entente cordiale*. But on the whole Roger Tichborne was a general favourite. He did his clubs, hunted with harriers and foxhounds, attended the Lord Lieutenant's drawing-rooms, stayed with the Clanricardes, Lord Howth, Lady Bellew, whose son he had known at Stonyhurst, and all the best people in Ireland.

When he came of age in 1850 we find the young man taking a keen interest in the complicated affairs of the resettlement of the estates, to which his consent was required and was not given without due consideration. Mr. Roger considered £500 a more suitable allowance for himself than £400, and this was conceded after due discussion. In the event of his uncle's death he stipulated that this was to be raised to £1000, and this point he carried. Then he made his own will with great care and much sense, appointing his friend, Vincent Gosford, his executor.

About this time he thought of transferring to the 10th Hussars or the 9th Lancers, who were going to India, and he told Gosford of his "great fancy" for his cousin, and desired she should have Upton to live in if he was abroad and she desired it. Both he and Kate Doughty became more attached to each other, and at length even Sir Edward Doughty began to observe what was going on. Aunt Doughty had been more or less a sympathetic looker-on all the while.

Sir Edward, after the manner of heavy fathers in drama and real life, urged sensible objections to matrimonial engagements and demurred to the lovers' pleadings. Youth was the first objection. The hero was only twenty-two, the heroine but seventeen. A more serious obstacle was that they were first cousins, to whose union Holy Church was adverse. The old man was lying ill in bed, and Roger saw him on January 11th, 1852, when he issued his edict and insisted that the young man's visits should terminate.

Roger Tichborne was a true lover, but a man of sense. He gave his word to the father that he should be obeyed. Fathers in those Victorian days were



figures of considerable influence in domestic circles. The young lovers met in the drawing-room and exchanged locks of hair. These they placed in lockets on which was inscribed the memorable date, January 11th, 1852. The next day poor Roger left Tichborne in despair.

There is a pathetic letter from him pouring forth his grief to his dearly beloved: "What was the nature of my thoughts, my dearest K., you may easily imagine, to think that I was obliged to leave the next day, not to see you again, not to see you again not perhaps for years, if ever I come back from India—the idea was bursting my heart." Ah me! The old, old story.

Later on the father was thought to be dying, and Roger was sent for. There was a further interview. Again, after the fashion of heavy fathers, the old man relented. He revised his edict. The young folk must wait three years and then, subject to Mr. James's consent and the blessing of the Church, he would stand in the way no longer.

In June Sir Edward was again ill, and Roger escorted Lady Doughty and Kate down to Hampshire. He had to return to his regiment, and before he left he had a walk with her upon the banks of the river. Here he gave her a paper, a copy of which, in a sealed packet, he had given to his dear friend and executor. Vincent Gosford. On it was written: "Tichborne Park. I make on this day the promise that if I marry my cousin, K. Doughty, this year, or before three years are over, at the latest, to build a church or chapel at Tichborne to the Holy Virgin in thanksgiving for the protection which she will have shewed us in praying God that our wishes might be fulfilled. R. C. Tichborne, June 22nd, 1852."

This was the parting gift of her lover, and from that day Kate never saw him more.

Difficulties hindered the young officer from transferring into a regiment going to India, and Roger made up his mind to resign his commission and travel in South America. He said farewell to Gosford and went across to Paris to see his mother and father and his old tutor, Chatillon, and other friends in France, and on March 1st, 1853, he sailed with his servant, Moore, from Havre, in *La Pauline*, for Valparaiso. He arrived at Valparaiso on June 19th, 1853, and the details of his various travels are set out in the letters that he writes from time to time to his family. Soon after his arrival he learns of his uncle's death, which gives him an income of £1,000 a year and brings him a step nearer to his inheritance. He had taken with him a credit note for £200, and now he writes to arrange with Glyn, his banker, for this to be raised to £3,000.

Among other letters that he wrote home is one to Gosford, in which he says: "I and my mother could never agree with each other together," and he confidentially suggests to his friend that when he returns to England his mother's allowance should be conditional on her living away from Tichborne, as "it would be quite impossible for me to put up with her character."

After many excursions from Valparaiso he sets out in the beginning of 1854 to cross the Corderillas to Buenos Ayres; from there he goes to Rio de Janeiro to look for a vessel to carry him to the West Indies. The last letter that he wrote home to his family is dated March 12th, 1854. It is written to Lady Doughty and contains a long account of his journey from Valparaiso to Buenos Ayres, and at the end of it he tells his aunt that he expects at least

sixteen pages from her when he reaches Kingston, Jamaica. His last letters were business communications to Gosford, and the final date of any known letter from Roger Tichborne is dated April 1st, 1854.

It is known that on April 20th he went on board the *Bella* at Rio. She was a vessel of 300 to 400 tons, commanded by Captain Birkett, and bound from Valparaiso to New York. The ill-fated vessel set sail as soon as Roger Tichborne joined her.

At that time he was a young man of five-and-twenty, heir to a baronetcy and great estates, in love with a charming girl he hoped to marry on his return to England. He had a large income, was in constant correspondence with his bankers and with his friend and executor, Vincent Gosford, about his affairs and the business arrangements he desired to make.

He was going to the West Indies and looking forward to receiving on his arrival a budget of family news. It is hard to imagine why such a man should voluntarily disappear and doom himself to a life of poverty and drudgery among low-class associates. Yet this was afterwards asserted and believed by many worthy citizens whose love of the marvellous overpowered their appreciation of facts.

Roger Tichborne was never heard of again from the day he sailed from Rio. The *Bella* never reached her destination. Some wreckage and a boat were found, but no survivor of the ill-fated crew was ever heard of. The insurers paid on a total loss. The arrears of wages were claimed by and paid to the sailors' relatives. The Tichborne family waited and made every inquiry after the missing ship, but at length, when no tidings were obtainable, the

courts presumed the death of Roger Tichborne and his will was proved and he was mourned as dead.

But his mother, poor soul, refused to admit that her first-born was taken. She clung to the hope that her son was still living. It became an obsession with her, and she lived on in the half-crazy belief that the sea would give up its dead and her son would return.

## 2. THE RETURN OF THE PRODIGAL

Twelve years are supposed to elapse between the first and second acts. Roger Tichborne, last heard of in 1854 on the ill-fated *Bella*, has been written off the book of life by all his friends and relations save one—his mother. She has never ceased to hope that her long-lost son will return to her, and obstinately refuses to believe that he is drowned.

When the husband, Sir James Tichborne, died in 1862, poor Lady Tichborne was left with a very limited private income. The settlements of the estate made no provision for her. Her son, Alfred, who succeeded to the estates, left her to live in Paris alone. He died in February, 1866, and was succeeded by an infant child. The lonely old lady was free to exercise her quest for the lost one as seemed best to her.

It is twelve years since Roger Tichborne disappeared, and now his doting mother begins to issue advertisements in many languages offering rewards for news of him. These describe his light brown hair and blue eyes, his property and estates are mentioned, and it is stated that he embarked in the *Bella* twelve years ago and has not been heard of since. The old lady has made up her mind that her son is living under a feigned name in Australia, and she gets into touch with a Mr. Cubitt, who,

in 1865, was running an emigrants' inquiry office in Sydney. He finds the problem much in his way of business and takes active steps to find the missing heir.

There was another Australian worthy who was also attracted by these strange advertisements, Mr. Gibbes, the attorney of Wagga Wagga, a small New South Wales town of some two thousand inhabitants. Mr. Gibbes, it appears, had been professionally employed in piloting a big fellow named Tom Castro, a rough-rider and slaughterman, through the Insolvent Court. Tom Castro is very much under the weather at this time, and Mr. Gibbes, attorney, is deeply interested in the documents that are appearing.

And then a strange thing happens. Mr. Gibbes comes to see his client, Castro on business. He is seated on the verandah smoking an old pipe that he had used perhaps for more than a year. Mr. Gibbes' attorney's eyes are riveted upon the pipe. He gazes at Tom Castro in amazement. "God bless my soul!" he cries; "I have spotted you. You are Roger Tichborne; they have been advertising for you. I see the initials on your pipe."

And sure enough the initials R. C. T. were carved on the bowl of the pipe.

Then Castro begs his friend to be quiet about it. He explains that he put the initials on his pipe out of devilry a year and a half ago. He seems to wish Gibbes to pass the matter over and say no more about it, but the attorney is all agog. "There you are! You are the man!" he cries gleefully. "I did not mean you to see this," says Tom, pocketing his pipe.

"I tell you what," says Gibbes sternly, "if you do not write to your mother in a month I will."

Thus did the dead come to life. The drowned baronet, after eleven years' wholly unnecessary poverty and obscurity, is found again in the bulky person of a common slaughterman at Wagga Wagga under the name of Tom Castro, which he had borrowed from some old friends at Melipilla in Chili, with whom he said he had lived during his South American travels.

Gibbes calls out the good news to Cubitt. Cubitt writes the joyful tidings to Lady Tichborne. The Tichborne family hear of it. The story is canvassed and discussed in the little village of Alresford, in Hampshire. From the confines of the county it passes into the wide world. Roger Tichborne, after eleven years of wandering in the bush, has acknowledged his identity and has written to his mother, who is awaiting his return with joy. It is a stupendous fact, but the world is always ready to accept the miraculous, and if the mother was satisfied why should the general public hesitate to swallow such a golden romance? Of course it was not to be supposed that the Tichbornes in possession of the estates or the trustees of the infant baronet should accept this claimant as eagerly as his mother, but no doubt, when he appeared, they would recognise him and he would enter upon his estates.

But much has to be done before he can make a move. He is very hard up. Gibbes, the faithful attorney, has to finance him with small loans. Cubitt has to convince Lady Tichborne that she must send money over, which her ladyship is only too ready to do. As Tom Castro he was married to a servant girl named Mary Anne Bryant by a Wesleyan minister, and she has just presented him with a girl. It seems good to Sir Roger now to



remember that he has always been a devout Catholic, and so he goes through a second form of marriage before a priest. Nor does the poor fellow desire to challenge the memories of Wagga Wagga with the tale of his adventures, and he writes to his "dear mother" that "I do not wish any person to know me in this country when I take my proper position and title." Therefore he asks for £200 for travelling expenses, and awaits the event in his old position of slaughterman under the name of Castro. Only by his immediate friends may his real name be mentioned.

The good mother replies with enthusiasm. She begs him to try and find his old friend Bogle, a white-headed nigger, formerly a valet to Sir Edward Doughty and now living at Sydney. Bogle is found out, and not only identifies Sir Roger but goes into his service and discourses with him about old times, and finally sails to England with him and acts the part of the old faithful retainer devoted to the persecuted nephew of his old master. That is a character which always touches the hearts of the gods. After the affectionate recognition of his mother the thing that made the man in the gallery certain of the Claimant's honesty was the touching devotion of that dear old white-poll'd negro, Bogle.

Another old servant of Sir Edward, named Guilfoyle, now turns up, and he, too, identifies Sir Roger, who sits down and on July 14th, 1866, writes to his "Dear Mama," who has not yet sent any letter acknowledging him: "I received your letter yesterday morning and was somewhat disappointed that you did not acknowledge me as your son. Surely my dear Mama you must know my writing; you have cause me a deal of trouble.

But it matters not Has I have no wish to leave a country where I enjoy such good health; I have grown very stout. Yesterday one of Uncle Edwards' Old servants call on me; he been living here a long while; he is name Guilfoyle, you must remember him, He was remodelling the Garden at Tichborne when I was staying at Uncle Edward's. He knew Me as soon as he see me."

Sir Roger had no doubt grown very stout, also he had grown very ungrammatical and somewhat illiterate, but it was all one to Dear Mama, who was ready to welcome her long-lost son in any form in which he might appear.

The faithful Gibbes had gathered together a small band of believers—there is no form of humbug but has a congregation waiting for it—and the believers put their hands in their pockets, Lady Tichborne sends over supplies, and the campaign is started with a capital of some five or six hundred pounds.

The last act of Sir Roger before leaving Australia was to enter into negotiations with Mr. Butts, of the Metropolitan Hotel, to purchase that Hostelry, so that when he had obtained his estates he might return to the country of his adoption and live the life of an hotel-keeper. It is strange how shy Sir Roger had grown of the society of his equals.

On September 2nd, 1866, after an absence from home of over thirteen years, Sir Roger, with his wife and child, a maidservant named Rosina McArthur, old Bogle, and young Butts, the hotel keeper's son, who acted as a sort of secretary to the baronet, sailed for England in the *Rachania*. They travelled by the overland route across Panama, and took the ship *Sella*, which arrived with its cargo of adventurers in Victoria Docks about half-past

five o'clock on Christmas Day. Directed by Bogle they went straight to Ford's Hotel, in Manchester Square, where Sir Edward used to stay when in London.

Sir Roger had not as yet sent home to his mother any very detailed account of his escape from the *Bella*, nor had he described his life in the underworld of Australia, nor his reasons for his voluntary exile and strange ordeal of unnecessary poverty, nor do we find on his arrival in England that he shows any eagerness to meet his nearest relatives.

He goes down to Alresford, it is true, and there becomes acquainted with good Mr. Rous, the inn-keeper, who recognises him. Dr. Lipscombe, a family doctor, and Mr. Edward Hopkins, a retired solicitor, both acknowledge him. But the best friend he makes is Mr. Francis Baigent, a Hampshire antiquary, remotely connected with the family. He becomes an enthusiastic supporter of Sir Roger and assists him to remember much of the family history which had vanished entirely from his memory.

It was not until he had been in England for a considerable time that he put forward any real account of his escape from the *Bella*, and when it did appear it was found that it was not a story that was capable of corroboration or criticism. You must take Sir Roger's word for it, or, if you preferred, you might disbelieve it altogether.

His story was that on the fourth day after the *Bella* left Rio and was out of sight of land, she sprang a leak and all hands were set to work the pumps. This was of no avail, and the captain ordered all on board to take to the boats. Sir Roger, with eight of the crew, was in the second boat. He saw the *Bella* sink. A high wind and storm separated the two boats. After three days

and nights in the open sea in an open boat a sail hove in sight ; a red flannel shirt—a pretty piece of local colour this— belonging to one of the crew was hoisted on an oar as a signal of distress ; the vessel took them all on board and landed them at Melbourne in July, 1854.

Sir Roger had lost all his belongings. He could not, he said, obtain a passage to England, and therefore accepted service with Mr. William Foster a stock breeder of Gipps-land, under the style and title of Thomas Castro, the name of a friend with whom he had lived at Melipilla, in Chili.

Of his further adventures from this date until he was discovered by the attorney, Gibbes, at Wagga Wagga, nothing of note seems to have been said, nor did his mother or those who accepted him as Sir Roger show much desire for detailed information about his Australian career.

His arrival in England soon became publicly known. Paragraphs and stories appear about the prodigal's return, and they are widely read and greedily discussed. Then the public learn that his mother has undoubtedly met him and recognised him, and the great heart of the people beats in sympathy with this touching evidence of the maternal instinct. "What more is required by way of evidence?" asks the man in the street.

Had they heard more details of the matter the supporters of Sir Roger might have been less enthusiastic about him. The selfish prodigal seemed in no hurry at all to meet his "Dear Mama." Lady Tichborne was at this time living in Paris, but her dear boy does not rush across the Channel to throw himself into her arms, nor does he visit his uncles and aunts in town. For some reason or other he goes to live in Gravesend. And one day, when

waiting for a train at Cannon Street, he happened to stroll into a billiard-room and scrape acquaintance with a Mr. Leete, a brewer's traveller, and mentioned to him that he required an attorney. Leete introduced him to Mr. Holmes, who took up his case from the first with keen energy and became a bosom friend of the baronet.

It is not until January 10th that these strange friends go across to Paris, where they put up at the Hôtel Lille et d'Albion. Nothing is done that night, and the next morning poor Sir Roger is taken ill. He dresses himself, however, and lies on his bed. Lady Tichborne comes to see him. Leete and Holmes are in the room. Sir Roger could never give any very clear account in after-days of what happened at this strange interview, but the main thing was satisfactory to all of them, the brewer's agent, the attorney, Sir Roger and Lady Tichborne—the old lady identified and acknowledged that the slaughterman of Wagga Wagga was, her dearly beloved Roger Charles Tichborne, baronet and heir to the estates.

It may have been that Sir Roger was to blame in not seeking out his various relatives, but sad it is that, although his mother came to live with him at Croydon and openly espoused his cause and allowed him £1,000 a year to live upon, the trustees and relatives refused to believe in him, and Cousin Kate, now Mrs. Radcliffe, and Vincent Gosford and others declared that he was an impostor.

He was widely recognised by servants and tenants and soldiers of his old regiment, and the world at large was indignant that a man whose mother identified and accepted him should be kept out of the estates to which he was obviously entitled.

Bills are now filed in Chancery and issues are

ordered to be tried. The somewhat meagre story of the wreck of the *Bella* and the rescue of survivors in an open boat appears upon an affidavit. The great litigation, which for three long years was the pride and despair of Westminster Hall, has started on its strange career, and the eager public seize upon each new rumour and discuss it with animated ignorance and irrelevant enthusiasm.

It appears that the Tichborne trustees have learned something about a certain Arthur Orton, a butcher of Wapping, who had stayed with the Castros at Melipilla, in Chili, and emigrated to Australia. He, too, it is said, was a slaughterman in Wagga Wagga, and has now disappeared and cannot be found.

Commissions are sent out to these places, cross-examinations take place upon affidavits, and from time to time details of these things are published, and the public mind is deeply moved. Much educated and legal opinion favoured the Claimant at this period. Sir Roger was a centre of discussion, a topic of the age. He himself shot pigeons at the Gun Club, borrowed money and spent it on legal proceedings, and his memory, under the care of Baigent and Rous and some old soldiers of his regiment, continued to improve daily. The reports of the commissions were not, however, favourable. Lady Tichborne had died in 1868. Poor Sir Roger owed some £30,000 and was threatened with bankruptcy. He could not drop his proceedings. The ball had started rolling and gathered force. "Tichborne bonds" are now issued to keep the litigation going. The public are cheered to know that their hero is to get his rights, and open their purses to subscribe. The ejectment action is set down for trial. Serjeant Ballantine is briefed for



Sir Roger. On May 11th, 1871, the curtain rises on a piece entitled "Tichborne, Bart. v. Lushington and others," one of the strangest legal dramas of modern times.

### 3. ARTHUR ORTON

Sweet are the uses of cross-examination. Truly it may appear ugly and even venomous at the moment, but in time it will display that precious jewel, truth, to an admiring world. As long as the Claimant contented himself with filing affidavits, sponging on his devoted "mama" and carefully interviewing those who were ready to receive him, he could pose successfully as an "unfortunate nobleman" deprived of his estates. Indeed, every month that passed he became better versed in the story of his own life. Baigent, the crafty antiquary, was at his elbow priming him with the history of the family, Lady Tichborne was living in his house and showing her dear boy all his letters and diaries, and two old soldiers of the 6th Dragoons were taken into his household to coach him about the years of his army service.

But the public invited to the drama were not taken behind the scenes. To them his case for ejectment wore quite a hopeful look in the early scenes. Over forty witnesses were called, many of them persons of the greatest respectability, who identified him with the late Roger Tichborne. The faithful were full of hope.

But they had not yet heard the Claimant's evidence and cross-examination. At length he enters the witness-box. Sir John Coleridge rises to ask a few questions. For twenty-two long days he pursues his feigned and real careers with pitiless but scrupulously fair investigation. Clever and astute and

well rehearsed in every detail as the Claimant was, it appeared that Sir John knew far more about Roger Tichborne and nearly as much about Arthur Orton as the man himself.

There was no hesitation or facing both ways about the case for the defendants. Coleridge was championing the cause of a mother and guardian and an infant child who was to be bereft of his inheritance by the odious cunning of a perjurer, a forger and an imposter. And the only method by which that could be made manifest against the plausible rogue who had victimised Lady Tichborne and so many of her friends was to place before the world, one by one, in detail, by means of cross-examination, hundreds of facts, each undisputed and conclusive, convicting him of lying and fraud.

Roger Tichborne, when he left England in 1852, was a slight delicate youth with narrow sloping shoulders and thin, straight dark hair. Tom Castro, the Claimant, who came to life as Roger Tichborne in 1865, was a man-mountain of enormous bulk, weighing over twenty-four stone, big-framed, with large round face and abundant fair wavy hair. Part of the Claimant's story was that he had stayed with Thomas Castro at Melipilla, in Chili, before he sailed in the *Bella*. Roger Tichborne had certainly never stayed there.

What had really happened was this. Arthur Orton, the son of a butcher at Wapping, born in 1834, afflicted in his youth with St. Vitus's dance, was sent to sea in a boat called the *Ocean* as an apprentice. This vessel arrived at Valparaiso in 1848, and here, in January, 1849, Arthur Orton deserted his ship and struck inland to Melipilla, where he was kindly treated by Don Thomas Castro, who kept a grocery store there. With this family

he lived for over two years, leaving in February, 1851, and returned to Wapping, where he worked with his father and was well known as "Fatty" or "Bullocky Orton."

In December, 1852, the wandering spirit seized him again, and he shipped as butcher on the *Middleton*, and sailed for Hobart Town, where he took a butcher's stall in the new market-place and carried on business for over a year. Then he wandered about, and for some time was in Gipps-land with a Mr. Johnson, and ultimately turned up at Wagga Wagga as a butcher, trading in the name of Thomas Castro. The Claimant's story was that he knew Arthur Orton well, but he could never produce him or anyone who had ever seen him after the day that Thomas Castro, butcher of Wagga Wagga, became Roger Tichborne.

In 1865 Castro was married to a domestic servant, Mary Anne Bryant, by a Wesleyan minister. Roger Tichborne was a devout Catholic. Castro gave his age as 30, just Arthur Orton's age. Tichborne would have been 36. And during all these years Castro had lived in almost abject poverty although, as Roger Tichborne, he must have known that he was entitled to £20,000 a year.

Lady Tichborne's advertisements were now appearing in the Australian papers, and in April, 1865, just as Tom Castro is about to set up his claim to the Tichborne estates, we find him writing to Mr. Richardson, of Wapping, to know how George Orton and his family are getting on. In this letter he says he has written letters to Orton and his old father. "What had old Orton to do with Roger Tichborne?" asks Sir John. But the Claimant cannot explain his interest in the Orton family, and being hard pressed takes refuge in the suggestion that

answers to such questions might tend to criminate him.

There was a little pocket-book in the case kept by Thomas Castro, when he was slaughterman to Higgins, of Wagga Wagga, in 1865, in which occur some curious phrases suggesting the inception in his mind of the fraudulent claim he proposed to make. There are some jottings of much sense and some humour. One of the earliest was: "Surely men with plenty money and no brains where [*sic*] made for men with plenty brains and no money." Further on: "R. C. Tichborne some day I hope," and then, most unlucky experiment of all: "Rodger." Roger Tichborne never spelt his name with a "d," but Tom Castro, *alias* Arthur Orton, did at his first attempt to write it.

An early letter that the Claimant wrote in Mr. Gibbes' office to poor Lady Tichborne is worth setting out at length as one of the most impudent and pitiful human documents that ever found its way into the dossier of a legal drama. He writes from

"WAGGA WAGGA,

January 17th, 66.

MY DEAR MOTHER.

The delay which has taken place since my last letter dated 22nd April 54 Makes it very difficult to commence this letter. I deeply regret the trouble and anxiety I must have cause you by not writing before. But they are known to my attorney and the more private details I will keep for your own ear. Of one thing rest assured that although I have been in a humble condition of Life I have never let any Act disgrace you or my family. I have been a poor man & nothing

worse. Mr. Gibbes suggest to me as essential That I should recall to your memory things which can only be known to you and me to convince you of my Identity. I dont thing it needful my Dear Mother. although I send them mainly the Brown mark on my side & the Card Case at Brighton. I can assure you My dear Mother I have Keep your promice ever since ; In writing to me please enclose your letter to Mr. Gibbes to prevent unnesersery enquiry as I do not wish any person to know Me in this Country when I take my proper position and title. Haveng made up my mind to return & face the Sea once more, I must request to send me the means of doing so and paying a few outstanding debts. I would return by the Overland Mail. The passage money and other expences would be over Two Hundred Pound for I propose sailing from Victoria, not this colonly and to sail from Melbourne in my own name. Now to annable me to do this My dear Mother you must send me——”

The rest is lost, but one can see the rascal sitting in his attorney's office planning an arrangement by which he can burst on the world as the missing baronet in a strange “colonly” where he will not be subject to “unnesersery enquiry.” There is not a single statement of fact in the letter which is not a falsehood from the point of view of Roger Tichborne. The date of his last letter, 22nd April, is impossible, for the *Bella* had sailed on the 20th ; there was no brown mark on Roger Tichborne's side, and the Card Case at Brighton was a scandal in which two prize-fighters, Johnny and Henry Browne, figured, with which Roger Tichborne had nothing to do.

But the fact is that at this period Tom Castro had an idea that Roger Tichborne was a wild scapegrace who had left England under some sort of cloud, and the stories he told Gibbes of his early life are full of fictions. He had at this period entirely forgotten that he had been educated at Stonyhurst and thought he had been at school with a Christian brother at Winchester; he knew nothing of his three years' service as an officer in the dragoons, but thought he had enlisted in the Army as a private and been bought out by his father after thirteen days. As I have said, he seems to have imagined Roger Tichborne had been really a prodigal son instead of being a young gentleman of fortune, on excellent terms with his people, travelling for amusement.

The most extraordinary document in the case, and one about which he could give no explanation in the witness-box, was the will prepared by his attorney, Gibbes, at Wagga Wagga, made for the purpose of obtaining money from the bank. He had then received a letter from his mother, signed H. F. Tichborne, and was pledged to Gibbes and other creditors to play the part of Tichborne.

In this amazing will, Roger Charles Tichborne, of Tichborne, in the county of Hampshire, but at present of Wagga Wagga, etc., not only invents an estate called Wymmering, in Hampshire, but leaves his mother, "Hannah Frances Tichborne, the whole of my property in Cowes, in the Isle of Wight." Now his mother's name was Henriette Félicité, and Roger Tichborne never had any property in the Isle of Wight. Hannah Frances probably seemed to Arthur Orton the most likely interpretation of H. F., and, anyhow, no one in Wagga Wagga knew any better.



The guardianship of his children he left, in this same document, to Henry Angell, of Dorset, in England, an old friend of his father, George Orton, who used to lodge with him, a worthy old sea captain, no doubt, but a strange guardian for the children of Sir Roger Tichborne. When Coleridge confronted the wretched man with this will he wriggled and twisted to evade answering the questions that naturally arose out of his hotch-potch of lies. In the end he took refuge in the explanation that he had put all the falsehoods in it purposely, as it was only a piece of nonsense which he had invented to get money from the bank. As to the insertion of the name of Henry Angell as guardian of his children, that, he said, was suggested to him by his old friend, Arthur Orton. There was no lie too barefaced for the fellow.

But the most dramatic proof of the man's identity was only obtained from him in reluctant dribblets. He arrives in England on Christmas night, 1866, and goes to Ford's Hotel, Manchester Square. One would imagine that Roger Tichborne, after an absence of twelve long years, would rush to find his mother, or one of his uncles, Alfred or Henry Seymour, or his aunt, Lady Doughty, or Vincent Gosford, or the Hibberts, Townleys, or Greenwoods, or some of his old friends. How many there were who would have rejoiced to welcome the wanderer on Christmas night of all nights in the year. But Tom Castro, *alias* Arthur Orton, dared not show his face to any of them, even if he then knew who they were.

After a hasty dinner he muffles himself up and leaves his hotel and his wife and child and makes off to Wapping. What has Roger Tichborne to do at Wapping? He knocks at the door of 69 High

Street to find that old George Orton is dead and gone, and Arthur Orton's mother is dead also. So he goes into the Globe public-house and sits in the snug to pursue his immediate inquiries into the affairs of the Orton family. He obtains the married sister's address, and so eager is he to learn all about the Ortons, and so shy is he of approaching the Tichbornes, that we find him back again at Wapping early the next morning. The crass folly of it! Wapping was his Waterloo!

Primed as he was about many of the family affairs, he broke down hopelessly over the details of his three years' education at Stonyhurst. Shown the works of Virgil he refused to try and read a word of them, and could not say whether the book was written in Latin or Greek.

"Did you ever read Euclid?" asks the Solicitor-General.

"I do not recollect."

"Has Euclid anything to do with mathematics?"

"Certainly not."

"Did you ever hear of the Asses' Bridge?"

His mind is a blank about all of it. He makes, however, one unlucky shot at Latin translation. He is asked if he remembers the initials L.D.S. on the books and papers of the school. He has no idea of them. He is reminded that they stand for "Laus Deo Semper," as any good Catholic would know. Could he translate that for them? It is worth a shot, and to the delight and gaiety of nations he hazards, "The laws of God for ever!" One cannot but admire the impudence of the rogue. Pages and pages of his lies, the foul falsehoods against Kate Doughty, the bogus story of his rescue in the *Osprey*, the subornation of Jean Luie and the wearisome exposure of the prisoner's crimes are

to be found in the large folios of shorthand notes of his trial at bar for perjury, at the close of which, on 28th February, 1874, after a trial lasting 188 days, he was found guilty and sentenced to fourteen years' penal servitude.

The exposure of this ruffian is said to have cost the Tichborne family £90,000, and the State must have paid at least as much to bring him to justice. The poor people who had subscribed to the cause of the "unfortunate nobleman" lost their all, and some still solaced themselves with the pleasant myth that their money had gone to defend an innocent man from the machinations of a Popish plot.

When the rascal came out of jail he published a more or less true account of his conspiracy, but it is said he went back upon this afterwards. It has really been beyond dispute, since the days of his cross-examination by Sir John Coleridge, that the Claimant was Arthur Orton, butcher of Wapping, and a perjurer and liar of the worst. But in this, as in all other matters, there were those who shut their eyes to evidence and, hugging the maxim, "*Vox populi vox dei*," to their hearts, refused to part with the generous myth that this low scoundrel was the victim of persecution.

## CHAPTER EIGHT

### CONCERNING CROOK DRAMAS

1. WHITAKER WRIGHT.    2. JABEZ BALFOUR.
3. GOUDIE

THE Crook Drama of modern days, in which your sentimental forger or burglar marries the leading lady and enters county society, is really a very old favourite. In olden days the Crook was a more picturesque fellow, generally a highwayman who danced minuets with high-born ladies on the roadside by moonlight.

Then there is another type of Crook Drama, that in which the villain dominates the simple and unpretending through four acts and is exposed to the delight of the gods at the end of the fifth, when he seems to be winning hands down. Shakespeare played with the theme in *Measure for Measure*, and Angelo is a thorough Crook. But if John William Smith, whose "Leading Cases" are still with us, had lived to add a volume of Leading Dramas to his literary works, he would, with his sane instinct, have chosen Molière's *Le Tartuffe ou l'Imposteur* as the leading Crook Drama. From it, in direct line, we get Colley Cibber's *Nonjuror* and Isaac Bickerstaffes *The Hypocrite*, in which, years ago, I saw Phelps play Dr. Cantwell, and Toole, Mawworm. Toole had a similar imposter piece, which he used to play in the provinces, called *The Serious*

*Family*, and later on came *The Colonel*, in which Tree was L'Imposteur dominating an unhappy family by a gospel of High Art, who were rescued by Coghlan, as a delightful American archangel, with his catching apostrophe, "Why cert'nly!"

At all plays of this class you find the stalls laughing somewhat haughtily at the supreme folly of the Crook's victims. But in real life, history tells us that it is among the inhabitants of the stalls that the Crook finds his best clients, and having captured them with golden lures he sweeps into his net the cheaper fry who follow their financial betters like silly sheep. A few fat and honourable guinea-pigs fed by the hand of the master and allowed to browse on his lawn will attract the whole animal world to the Crook's slaughter-house.

No one knew this truth better than Whitaker Wright and Jabez Balfour, whose legal Crook Dramas are typical instances of financial villainy. Goudie is in another class, and recalls plays like Lillo's tragedy, *The London Merchant*, or *The History of George Barnwell*, and Moore's *Gamester*. Nothing is more popular with the gods than drama lashing their own favourite peccadilloes. Edward Moore, though bred a linen-draper, thoroughly understood this when he planned *The Gamester*. Although they were modest about claiming the honour, it is matter of history that some of our best Victorian actors sprang from the mystery of linen drapery. Your true shop-walker has an instinctive histrionic gait. Success in drapery depends not on what you have to sell but the native tact and courtesy with which you sell it. The literary dramatist believes that he can sell his own wares. It is far from true. They are sold by the linen-drapers of the stage, who fling the patterns across the footlights and fascinate the

women in the stalls with their smiles. Therefore, of all persons to write a successful play, commend me to a linen-draper as one likely to deliver the goods.

Edward Moore, in *The Gamester*, wrote a part for Garrick. He thoroughly understood the prejudices of his audiences and, to use a modern phrase, knew "the stuff to give them." No doubt it is stuff, but dramatic stuff and sound playwright's stuff of its kind. Garrick knocked it into shape at rehearsal and acted it. That is how good plays are made. Beverley was certainly a fat part—all fat, in fact, and even in its day was "offensive to some squeamish palates," as fat often is. The piece portrays in highly coloured and forcible scenes the evils of gambling. There are many legal dramas that enforce the same lesson, as, for instance, the story of the bank clerk, Goudie, which is an effective answer to Stukeley's gospel:

"Let drudging fools by honesty grow great,  
The shorter road to riches is deceit."

The records of legal Crook Dramas go to show that at long last the law generally gets the better of the Crook.

## I. WHITAKER WRIGHT

When the tipstaff touched Whitaker Wright on the shoulder and led him through a door beneath the Bench, out of the sight of the world for ever, many a City man in the crowded court must have felt a cold chill in his heart and remembered the pious thought of the good old Puritan as the criminals in the cart passed him in the street: "But for the grace of God there goes John Bradford."



For W.W., as the knowing ones called him, had been the idol of the market-place. He was reputed to have wealth beyond the dreams of avarice, his speculations seemed to be inspired by the touch of Midas, all his paper turned into gold, he surrounded himself on his boards by directors of the noblest houses, men of unblemished honour, and his career, both here and in America, had been a path of financial roses, roses, all the way.

He had leaped at the sun and seemed to handle the gold of it, and the world applauded his daring and success, and flocked to purchase his paper and share in his good fortune. To be a nominee of W.W., when a new issue was forward, was to be a wayfarer on the road to fortune. Old father antick, the law, was sulking in his den, looking disapproval at these high jinks of finance. The clever ones said that W.W. knew too much for the old gentleman and had brought a bag of tricks from across the Atlantic that would bluff him off the Bench if he dared to attack their hero. Even the high priests of the law nearly shirked the encounter when the world called upon them to come into the ring. But at long last the law stretched out its arm, and this golden hero was found to be but a common gambler packing the cards and loading the dice in the old ignoble way.

W.W. was an adventurer from the first. His life is the very picaresque of finance. Born in 1845 in the north of England, equipped with some knowledge of chemistry and assaying, we find him at an early age settled in the United States, where he buys a claim for 500 dollars, sells half to provide working capital, proves the mine and works it successfully, and, to use his own words, "After the first 10,000 dollars was made the rest was easy." This specula-

tion was the foundation of his fortune. In 1879 he was in the Leadville boom, making and losing two fortunes there, and at the age of thirty-one he was more than a millionaire and a leading figure in the mining and stock-broking world of New York. But money won at the tables is always elusive. He could not hold what he had gained, and he was brought down by the failure of an iron and coal company.

About 1889 he came to England and floated numerous mining and speculative companies. In the early 'nineties he made over £200,000 and began to attract to his circle all sorts and conditions of men, who were seized with the common mania of desiring riches without equivalent labour. W.W. was a buoyant, pleasant, hospitable soul who knew the ins and outs of mining life and mining camps, had the appearance of being knowledgeable in business affairs and ready to share his certain prospects of gain with his fellow-men. He had all the gifts and arts of the Tigg Montague school, and from his Offices and his board-rooms there issued to the grateful world new paper of Lake Views, Mainland Consols, Paddington Consols, Wealth of Nations, exploring and finance corporations, and all those Eldorados which tickle the greed and fool the simplicity of the City gambler.

The most noted of all these companies was the London and Globe Financial Corporation, the parent of the brood and a popular instrument of speculation. This company's balance-sheets from time to time showed substantial profits, on which dividends were paid. The company—which like all the rest of them was a pseudonym for W.W.—engaged in large market operations in shares of the Wright group. In 1899, for instance, Lake Views

went from £9 to £28, and the followers of W.W. rejoiced. All these companies—the London and Globe, the British America Corporation, the Standard Exploration Company and many others, were housed in one office at Lothbury, staffed by one set of clerks, and although nominally directed by noble lords and eminent laymen, these good men were literally only pawns on the board, and the whole business of the companies was absolutely controlled and directed by Whitaker Wright himself. So much so, indeed, that, although the articles of the London and Globe demanded that two directors should sign cheques, yet W.W. did not permit this, and every cheque was signed by himself and a secretary.

In 1899 Lake Views were in an ailing condition. There was a struggle of bears and bulls over the patient. W.W. threw down his glove and rushed up his reserves to support his moribund property. The other fellows were too many for him. He threw three-quarters of a million down the throat of Lake Views, but Lake Views could not be persuaded to sit up and take notice. All the gold in Lothbury seemed to turn to paper and ashes. The London and Globe put up its shutters. It is only by a free use of mixed metaphors that one can describe what seems to have happened.

Many people were ruined, but W.W. had at least a home to shelter him. He had a house in Park Lane filled with art treasures. He had a glorious estate at Witley, near Godalming, and here, as at Solomon's palace—

“Fish-ponds were made, where former forests grew,  
And hills were levelled to extend the view.”

Indeed W.W. out-Solomoned Solomon in his lavish extravagance, for at the bottom of one of his

fish-ponds he constructed a billiard-room of glass, where gaping carp could watch the great financier making losing hazards.

As long as the London and Globe had been regular with its 10 per cent dividend these evidences of W.W.'s greatness were spoken of in reverent whispers, but now the hungry ones out in the cold were clamouring for their destruction. Actions were brought against him by the disappointed to get their money back, but these were not successful. And then occurred what often happens in these popular movements—the mob that had been gambling and speculating as they had thought with considerable skill and success began to discover that they had been tricked and fooled. They had no more roses and flags and joy bells for their hero, they would not even let him rest in his palaces in peace; every man who had gambled with him and lost seized a stone to pelt him for his misdeeds, and there was a rush to the offices of the Public Prosecutor to see what he could do to help them to revenge.

Complicated and mysterious as the details of W.W.'s finance must always remain to the man in the street, one thing was abundantly clear, that he had kept the golden balls in the air by the financial juggler's common trick of issuing false balance-sheets. But the Public Prosecutor and the Attorney-General shook their heads over the notion that this was a matter with which they were in any way concerned.

This attitude made the great heart of the people beat vigorously to arms. W.W.'s list of guinea-pig directors unfortunately contained the names of many noblemen and gentlemen of high degree. The man in the street jumped to the erroneous

conclusion that high officials were protecting these aristocrats, and this made him very angry.

The first remarkable scene in the legal drama was staged in the House of Commons. An amendment to the address was moved expressing regret that no proceedings had been commenced against the directors. The popular view was that if a little man embezzled £100 the law swooped down upon him at once, and that if a bigger man embezzled several £100,000 it was not dignified in the law to sit with folded arms and do nothing. The commercial view was that the whole thing had been a gamble, and gamblers should not squeal about their losses, but that false balance-sheets of any kind were serious crimes, and their authors should be run in.

But for some reason or other the eminent Government lawyers saw difficulties in the way of framing an indictment. The Solicitor-General indeed went so far as to say that he fully believed that W.W. had issued a false balance-sheet, "but," he asked, "would anyone get up and say that he could be prosecuted because he published a false balance-sheet?" This challenge was accepted by several who were better versed in English law than the Solicitor-General. Nevertheless, the House stood by the Government officials, and the amendment was defeated. As the curtain fell on the first scene the hero was in the limelight and the mob were heard "off" grumbling viciously.

Early in 1903 the scene is moved to the Law Courts. A motion is made before Mr. Justice Buckley that he should order the Official Receiver to prosecute. W.W. is not on in this scene, having removed himself to Paris. A friend who listens to the arguments wires him that "everything looks bad case for prosecution settled."

W.W. takes ship for America in the name of Mr. Andreone. Mr. Justice Buckley takes a far rosier view of the possibilities of an indictment against persons who issue false balance-sheets than did the Solicitor-General. He orders the Official Receiver to prepare one and give it a trial, so to speak. W.W. is met on arrival by the police, and returns to take the trial, which comes on in due course in January, 1904.

It was a trial at bar in the King's Bench and heard at the Law Courts. Mr. Justice Bigham presided, and the leading counsel for the prosecution was Mr. Rufus Isaacs, K.C. It was ill-fortune for W.W. that he should have come up against two of the greatest business experts in the profession. There was no difficulty in framing an indictment, section 83 of the Larceny Act, 1861, having been specially made and provided to check the kind of financial monkeying with balance-sheets with which W.W. was charged.

The one hope of the prisoner was that the jury would be so muddled and bemused by the complications of W.W.'s methods of finance that they would not understand the crime he had committed. But Rufus Isaacs and Bigham between them made manifest what had been done. It was clearly exhibited that when the London and Globe balance-sheets had to be made up the Company was usually insolvent; that thereupon W.W., manager of A Company, entered into paper transactions with W.W., manager of B, C and D Companies, and filled the coffers of the London and Globe for the moment. Within ten days of a balance-sheet being issued, showing £463,000 profit, the Company was hopelessly bankrupt. The inner machinery of the manipulations by which the £463,000 was produced was displayed piece by piece and patiently explained.



The jury did their duty, and at the end of a long and fair trial found Whitaker Wright guilty of the offences with which he was charged.

The man himself was under no illusion about what the end of the trial must be. On the last day he came down to the court prepared for a conviction. He sat whilst Mr. Justice Bigham summed up to the jury, scribbling mechanically upon a piece of blotting-paper "W's" made of four downward pen strokes, also the word, on which the whole case turned, "INTENT" in capitals, and ever and again in Roman numerals "VII," in prophetic assurance of the term of years to which he knew he would be sentenced.

When the judge had pronounced the sentence, the prisoner, with folded arms and in a clear voice, asserted his innocence of any intent to defraud his shareholders, and content with that followed the tipstaff and made his last exit from the public stage.

Within twenty minutes or so of the end of the trial, in a room of the court, talking with his friends and about to light a second cigar, he throws down the lighted match on the ground and falls forward, breathing heavily.

A doctor is sent for and finds him dying. His romantic career is over. The light of life in him flickers slowly out. He has poisoned himself with cyanide of potassium. Had that failed he had in his pocket a new American revolver with six loaded chambers. He had rattled the dice and packed the cards for the last time. His game had been exposed and condemned. He had played his last trump and handed in his checks. Let the curtain fall.

## 2. JABEZ BALFOUR

Jabez Balfour seems to have persuaded himself that he was an ill-used man, but in truth he was a

great criminal. Nevertheless, the financial crimes he suffered for were not his worst actions. The world would have forgiven him for juggling with figures but what made his fellow-citizens shudder at the name of him was his cruelty and hypocrisy. He was a despoiler of the widow and the fatherless. He caused the widow's heart to sing with joy by promising her a financial share in land schemes flowing with milk and honey, and callously ruined her by financial dishonesty.

But one is bound to admit the greatness of him as a criminal. It is always an attribute of greatness to damn the consequences—to others. Had Jabez stooped to defend his actions he would have reminded us that a general, intent on famous victories, cannot stop to inquire too closely into their effect upon the human lives and homes and industries which must necessarily be sacrificed to his glory. He would have explained, too, that the statesman who has a great policy to carry through, or is in difficulties about retaining office, never allows his mind to dwell upon the world-suffering his experiments produce; that even the surgeon has on occasion to steel his heart to the pain he is causing; and that the lawyer—the most faithful and modest of the world's servants—makes a practice of taking his costs out of the estate even though the orphan beneficiaries are thereby reduced to beggary.

To the end of his life he boasted, as Napoleon might have done, of his victories in bricks and mortar as “an abiding memorial of my enterprise.” “Look,” he cried, “at Whitehall Court”—the pioneer of the fashionable flat-system of London—“the Hotel Cecil, Hotel Victoria, the Albert Mansions and the great suburban estates! These are my handiwork!” It was nothing to this strong

man that his palaces were built on the ruins of many hundreds of poor homes, and the mortar of his buildings was mixed with the blood and tears of widows and orphans.

Jabez Balfour was born in 1843. He was educated in France and Germany. His father had a subordinate office in Government service. His mother was a writer of devout and moral books. He himself was brought up on *Self-Help* and *Duty*, the sailing regulations of many a young Victorian. When Dr. Samuel Smiles wrote *Self-Help*, he little thought how many of his young disciples would construe self-help into the pleasanter duty of helping yourself. The good Doctor has a lot to answer for.

Balfour set out from the first to succeed. He worked hard as clerk to a firm of parliamentary agents, then became manager, then partner. He was one of the original directors of the Lands Allotment Company and that famous Minotaur among limited companies, the Liberator Building Society. In 1870 he became managing director of this company.

His early business and public life was spent in Croydon. He was first mayor in 1883. He became a Member of Parliament in 1880. He was a member of the Croydon School Board. A noted man in Nonconformists circles. In a word a pious, successful, busy citizen, true to the Smiles type and outwardly reacting to the Smiles tests.

He continued to prosper in the eyes of his fellow-men. He moved from Croydon to Marlborough Gate. He bought an estate at Burcot, in Oxfordshire and was a model landlord. He continued his parliamentary career, and was regarded by the world as a model citizen, philanthropic, religious, honest, and above all successful. This continued

until 1892, when there came a crash, and in December of that year Jabez Spencer Balfour, the white hope of Nonconformity, fled to Argentina with a pocketful of other people's money, and, what was even more shocking to the faithful, a lady who did not legally belong to him.

The Liberator had gone down for ever with £7,000,000 of the money of small investors, and thousands of homes were ruined beyond hope of restoration.

The drama of Balfour's career was a continued contest for nearly twenty years against the laws of his country. To carry on his chosen life, to keep his companies on their feet and to build his palaces, he had to charm out of the pockets of the unwary a constant supply of ready money. That he possessed certain great qualities must be recognised. He was a man of iron nerve. At any moment during many, many years, an inquiring shareholder, an honest and efficient co-director, a sharp auditor or even a common policeman might have burst the bubble on which his career was founded. But he seems to have been a man able to live in apparent happiness, gratifying his immediate daily wants without any thought of the Nemesis of to-morrow. One thinks that in the course of years he came to believe that his luck was eternal, or even, perhaps, that he was an honest and godly man walking in the paths of righteousness. The psycho-analysts tell us that there is no limit to our powers of self-deception.

When one comes to study the methods by which this reckless speculator balanced himself on the whirling globe of the financial world, one is surprised at the simplicity of his plans and his supreme confidence in the negligence and inefficiency of those of his colleagues who were honest men.

Somewhere about 1880 the Liberator was in a bad way. There was in the same offices another company run by Balfour, called the House, Land and Investment Company. In order to attract public investment in these companies it was necessary to show on paper that they were earning large sums and also to pay out dividends. As a matter of fact these companies made no profit from 1880 to 1892, but during the whole of that time their appearance of prosperity was wonderfully maintained.

One method of window-dressing was for the two companies to interchange cheques, showing on paper transactions of tens or hundreds of thousands that had no real existence. One clerk drew a cheque, and another clerk drew a cheque, and lo and behold, there appeared in the reports and profit and loss accounts and balance sheets of the companies credible accounts of money made, upon which dividends are paid, and now fools rush in with ready money to share in the milk and honey.

But this simple scheme alone would not have sufficed for twenty years. It appears that, whilst in Croydon, Balfour found a man named Newman, a carpenter and surveyor, Hobbs, a builder, and a solicitor named Wright. Hobbs was a town councillor and Mayor of Croydon after Balfour. In the 'eighties Newman became Newman Limited. Hobbs, who was insolvent to the tune of £26,000, also became a Limited Company. Wright was the solicitor to many of the concerns. The game then was for the Liberator to finance these dummy companies. They were "profit makers." Contracts were made with them, in respect of which a few pounds at most passed, but these contracts were made the basis of accounts showing profits earned. On these so-called profits dividends were paid, and

again new shareholders rushed in to provide money for further speculations.

The vastness of these bogus transactions may be appreciated when one learns that Hobbs, Ltd. starting in a state of insolvency in 1885, owed the Liberator £2,000,000 when the crash came, and just prior to this the Real Estates Company, another dummy, took over Newman's liability of over £600,000, and in the final account was found to be indebted to the Liberator in a sum of £1,300,000. This Real Estates Company had started with a capital of £178, but it was treated for the purposes of balance-sheets as a solvent creditor, and transactions with it were entered in the Liberator books as real transactions.

It may seem extraordinary that among the nobles and simple directors that adorned the various boards of these companies no man was found honest and efficient enough to understand and expose what was going on, but the guinea-pig is not an animal of much natural intelligence, and Balfour chose his collection of guinea-pigs with care and circumspection. There were, indeed, upon these boards only two classes of beings, colleagues who were in with Balfour and playing his game, and tamed creatures worshipping at his shrine and thankfully feeding out of his hand. Had there been on the directorate of the Liberator a few honest men of real capacity and industry in the business they had undertaken for the shareholders, it seems impossible that these gross and impudent frauds could have succeeded.

In 1892 the crash came. After a hard-fought election at Burnley, Balfour returns to London and finds that at last he has to face the music. But the disaster is even bigger than anything he could hope



to account for. A liquidator is appointed. The great Liberator is smashed. The golden financial idol falls to the ground, and the fragments are found to be very common clay. Seven millions of poor people's money are said to be lost for ever. A wail goes up from every district in the country, and in every chapel in the villages there is sorrow and misery. A howl of execration is raised from every quarter against the great man who had led so many to destruction. His lieutenants, Hobbs, Wright and Newman, are arrested. He himself dare not face the music and withdraws quietly to Argentina, with whose republic we have no satisfactory arrangements about extradition.

There seemed to be a distinct misunderstanding between the apostle and his disciples as to the true causes of the disaster. Hobbs and Newman openly blamed Balfour's methods for the result, whilst on the other hand Balfour complained bitterly of the way in which his orders had been misinterpreted. Had he stood his trial with the others I think he might have satisfied the court that he had not personally approved of Hobbs stealing the money of the Liberator by falsifying balance-sheets, or of certain forgeries committed by others. His colleagues might, of course, have rejoined that their acts were necessary to enable them to live in fine country houses with greenhouses, stables, horses and carriages, and thereby attract investors to come in with them and share their prosperity.

When after nearly three years of exile the reluctant, Balfour returned to England in custody to take his trial, it was proved against him that on one occasion he had shared a £20,000 illegal commission with Wright, but it was wonderful how the master-mind that had undoubtedly created the system of finance

which had ruined so many lives had been careful to allow the actual working of it to be the overt acts of his dupes and understudies.

The punishment of the wrongdoers was severe and exemplary. Hobbs and Wright were awarded twelve years' penal servitude and Newman three years'. The two trials of the Master were dull affairs enough. He had convicted himself when he fled the country, and it was not considered a harsh sentence for the wrongs he had committed that he should be sent to penal servitude for fourteen years.

There were some who were inclined, knowing how rife the frauds of company-mongers and promoters were throughout the financial world, to regard Jabez Balfour as a scapegoat. Goat he certainly was, and one of the extreme left, and the cause of ruin to many righteous sheep; but his callous hypocrisy stills any feeling of pity for his fate.

He served his sentence and came back to the world to write a book of admirable restraint and sense about his prison life, wisely abstaining from any defence of his crimes. His capacity of living each day without any thought of the morrow must have stood him in good stead during the terrible ordeal he underwent in jail. But to a normal man the years of his prosperity, when he was daily living over an abyss which at any moment might open and devour him, would have been more terrifying and nerve-racking than a life in jail.

Balfour was the hero and centre of interest in a long antagonistic drama between the adventurer and the law. In the course of it he was ready to sacrifice his fellow-citizens. He made a brave struggle, but the law prevailed, and he did not murmur at his defeat. Leaving the dock after his

sentence, they brought him cold meat and champagne, and he made a last hearty meal with philosophic enjoyment of the good things he was parting from. Simple, great and selfish to the last.

### 3. GOUDIE

To make the elaborate cunning and the trusting simplicity of Thomas Petersen Goudie at all comprehensible, and to explain to an audience the reckless enthusiasm with which he laboured to destroy the wealth of his employers, a playwright would seek to write a prologue with some atmosphere of wizardry about it.

He might picture for us young Goudie in his Shetland home, that strange wild land of stacks and skerries, of voes and geos, of cliffs and caves, an ardent boy hero descended from a race of Norse pirates eager to follow in the footsteps of his ancestors. Some Norna of the Fitful Head would chant to him the old sagas, casting a spell over him and implanting in his young mind a predatory desire to sail for Southern lands of promise and spoil the fair-haired Saxon.

Dwelling, too, in a primitive land of knitted wool and pleasant little ponies we should see him in his daily island life a simple peasant lad, bound to be an easy prey in the later scenes of the drab conspirators of the Saxon race-course.

These things may be but fancies, and Goudie, after all, may have been nothing but a vain eccentric criminal. All we know is that he was a Shetlander, and arrived in early life at Liverpool with excellent testimonials. Alas, these testimonials are too often the prelude to a career of crime. It is so hard to live up to their text. The knowledge of their falsehood shames the modesty of youth.

At the end of 1901 Thomas Petersen Goudie was twenty-nine years old. He had been a clerk in the Bank of Liverpool for seven or eight years. He was regarded as a reliable, active and intelligent servant by all at the bank. He lived in lodgings, for which he paid a pound a week, including board, and he had a small account at the bank into which he paid his savings. In all outward respects a modest careful young fellow living up to the written word of his testimonials.

He had risen to the post of ledger-clerk and had control of the accounts H to K, and any cheques on the Hudson account, a name redolent of soap and millions, which came through the clearing-house, were brought to Goudie to be entered in the ledger.

On November 21st the drama of which Goudie was the unsuspected hero came to a sudden conclusion. The accountant of the bank remarked to him that it was very curious that there was a cheque in the clearing-book that was not in the Hudson ledger account. Goudie agreed and suggested it must have been entered by mistake in a wrong account. He went aside and made an entry in another account and left the ink to dry. This he presently showed to the accountant, but by this time that official had been to the file to look for the actual cheque and found that it was missing. "That," remarked Goudie, "was for the porter to explain," and as this official was away at the moment Goudie got his hat and umbrella and stepped out to get his lunch. In this unceremonious manner did he resign his appointment. Two months later he was found in obscure lodgings in abject poverty. He was arrested, and in February, 1902, pleaded guilty at the Central Criminal Court, to robbing

his employers of a hundred and sixty thousand pounds.

His methods had been simple in the extreme, and he had carried them on without interruption for about three years. He had access to all the Hudson cheques, and he made a most excellent forgery of Hudson's signature. Being a customer of the bank himself he was able to buy a cheque over the counter. He then forged a cheque for any amount of money he wished. The amount of his forgeries varied from £3,000 to £30,000, and these cheques were, as a matter of course, met by the bank. When a cheque came to the bank to be paid it was handed to the clearing department. Here a clerk entered it into a journal. This journal was handed with the cheques to Goudie to be entered in the ledger. The entries were never made, and Goudie destroyed the cheques instead of filing them. Of course he carefully "ticked" the journal to make it appear that all was in order.

There was, however, more to be attended to. Weekly balance-sheets had to be falsified, and at the times of audit false debits had to be entered in other accounts and put right after the audit was over by entries of false credits.

All this was done with such skilful elaboration that for a long period thousands of pounds were taken from the bank by cheques of varying but constantly increasing amounts. The puzzle in the case was what had become of the money? If Goudie had not made up his mind to make a clean breast of it the real villains of the piece would perhaps have got away with the booty. But he certainly owed no gratitude to his fellow-thieves, who had robbed him with as little compunction as he had robbed the bank.

Goudie was a victim to the lure of gambling. About three years before his arrest he had started betting. He made small bets of five shillings or a pound at most. He had ups and downs, but like most ignorant backers his losses were greater than his gains. He began then to forge the Hudson cheques, and finding this a simple way of satisfying his tastes he continued his depredations.

He now opened a banking account at Lloyds Bank, into which he paid £10,000 in the name of John Style, a pretended oil and colour merchant. By this means he could increase his wagers, and whereas he was formerly content to lose fives and tens, he was now able to lose hundreds and thousands.

A pigeon of this plump and healthy character could not flutter abroad within the curtilage of the race-course without attracting the hawks that are to be found perched upon those queer boxes which are not "places within the meaning of the Act."

The first gentlemen of the road who took to plucking him and afterwards pleaded guilty to conspiring to defraud the bank were Kelly and Stiles. Kelly was a Bradford man who followed racing, and Stiles had been a runner for a book-maker. These two worthies met poor Goudie in a railway train, journeying to town, and invited him to a game of cards. They found him to be a youth with an extraordinary capacity for believing any kind of story that was told to him. The next day they invited him to Hurst Park Races and proceeded to victimise the poor wretch by "telling the tale." Stiles was a man of enormous fortune who often had £5,000 or £10,000 on a race. Stiles would let Goudie have a share of his bets. Poor Goudie was delighted with his condescension, and though he was £230 down on the day Stiles consoled him



by promising to do big business for him in the future and win it all back. Goudie returned to Liverpool and wrote grateful letters to his comrades, enclosing cheques.

Stiles, however, had a run of bad luck, and Goudie had the consolation of hearing that Stiles' losses were greater than his. In this way each of these rascals got several thousand pounds of the bank's money through the medium of their simple young friend.

But they could not hope to keep such a delicious morsel to themselves, with so many hungry crooks around, and what may be described as a Goudie Exploitation Syndicate was soon formed in the racing underworld to work the claim on scientific principles. The three shareholders were Burge, a prize-fighter in debt and difficulties, Mances, who had a room in a Charing Cross hotel and practised the profession of a card sharper, and Marks, a small starting-price bookmaker in the Adelphi.

Burge got to know that there was a bank clerk in Liverpool shedding gold about the race-course. He and Mances went down to spy out the land. Burge pointed out Goudie, and Mances went up to him at once saying: "You go in for racing. I have seen you with Kelly and Stiles. You are a clerk in a bank at Liverpool and can command a lot of money." Goudie was frightened, but Mances soothed him, assuring him that he was not a detective but an American and a friend of a jockey called Ballard, who could give them any number of winners. He would introduce him to a bookmaker who worked for all the wealthy Jews, and this bookmaker, Marks and Co., would let him have £5000 on any race within an hour of starting.

Goudie had never met such friends as these. They were even better fellows than Kelly and Stiles.

He would now retrieve all his losses with a little luck. But no luck came. He wired Mr. Marks on Mances' advice: "Hedera 5000. T. P. Scott." Scott was his *nom de sport*. The reply came from town: "You are on Hedera 5000. Marks." Of course no bet was made and Hedera lost, but Goudie was not dismayed. More cheques were forged and more imaginary bets were made. On one day Goudie sent Marks three cheques in a registered envelope, two for £9000 each and one for £7000. Marks began to advertise as a book-maker in a large way, and opened a banking account with the *Crédit Lyonnais*. Burge opened a banking account. Mrs. Burge did the same. Mances invested £33,000 in Consols.

For three weeks this mad traffic continued, Goudie never winning. He did spot one winner at 5-2, but Marks unfortunately did not get the money on, whereby Goudie missed £25,000. The last two cheques he sent out were £30,000 and £31,000, which the conspirators divided. It was now increasingly difficult to hide the swag. Banks became suspicious and made inquiries of each other. Such wild transactions were bound to come to a sudden end. The crash came on November 21st. Two days afterwards warrants were issued at Bow-Street against Marks, Mances and Burge.

Marks packed a bag and left his hotel for Brighton, where he doubled across the Downs to Newhaven and went to France. He had not time to take his money with him, and a few days later he wired to Inspector Frost, who was in charge of the case, that he would surrender at Folkestone. The inspector met the boat. Marks had sailed from Boulogne, his bag was on board, but its owner had vanished. It seems clear that he committed suicide by jumping

overboard. Mances changed two thousand pounds into French money and got away. Burge remained to take his trial. He had never met Goudie personally nor signed anything in his own name, but the prosecution were able to show that he was the real promoter of the scheme and had drawn his share of the loot. Mr. Justice Bigham considered him nearly the equal of Goudie in wickedness, and assigned him terms of imprisonment amounting in all to the ten years' penal servitude which he had awarded to Goudie himself. Under the indictment to which the two lesser scoundrels pleaded guilty, two years' imprisonment was the maximum sentence, and the judge expressed his opinion that it was insufficient for the crime they had committed.

One cannot read the story of the young clerk without pity for his indescribable folly and anger at the wickedness of those who fastened upon him and dragged him remorselessly into deeper abysses of crime. He never seems to have spent any money on himself, and was guilty of no extravagance or vicious indulgence. He was a moral idiot on the subject of gambling, and seemed to take pleasure in paying away huge sums of money under the impression—a false one in most cases—that he was paying gaming debts. One cannot help wishing that he and his testimonials had remained in Shetland, and that he had never been subject to the temptations of a bigger island.

## CHAPTER NINE

### CONCERNING A DRAMATIC HERO

CHARLES PEACE

#### I. HIS GREATNESS. 2. THE LAST PHASE

IT was Fielding who first pointed out that the sages were misleading the world when they endeavoured to confound the ideas of greatness and goodness, and indeed he went so far as to insist that they were entirely distinct from each other, and that "greatness consists in bringing all manner of mischief on mankind, and goodness in removing it from them."

And what do we find in drama and history? Cæsar, Macbeth, Marlborough and Napoleon—these are your really great men. No mealy-mouthed fellows these with scruples about their duty to their neighbours. For the acid test of all true greatness is selfishness. The sublime egoism that transmutes every action, however debased, into the really golden rule, the readiness to sacrifice and destroy anyone that stands in your path, the power to compass the ruin of your enemies and watch their death struggles with indifference—these are the necessary attributes of greatness.

Choose the names of your great ones as you will : Solomon, Alexander, Mahomet, Luther, Queen Elizabeth, Catherine de Medici, Cromwell, Walpole

or Parnell—a miscellaneous bag certainly—and you will find that though they all react to tests for greatness you may analyse their tendencies towards mere goodness with disappointing results. No doubt each and all had many good qualities, but their greatness is in no way dependent on righteousness. Success and the attainment of supreme power in that state of life to which men call themselves—these are the only necessary attributes of greatness.

And this is why great men are better discerned from afar. "Few men are admired by their servants," says Montaigne, and it is for this reason probably that dramas of hero worship on the stage seldom attain lasting success. There is too much hero and too little else. Greatness is difficult to express by the human physical representation of a finite actor, though it can perhaps be hinted at in the written word.

Plays about Cromwell, Napoleon or Elizabeth are generally more interesting to read in the study than to see upon the boards. For stage success one requires a chronicle play of their deeds, but that gives but a poor demonstration of that compelling motive power ambition which is the force that pushes your hero along his predestined path to throne or scaffold.

Of Charles Peace one may certainly say that he had ambition, and, as Fielding said of his great prototype, "as his most powerful and predominant passion was ambition, so nature had, with consummate propriety, adapted all his faculties to the attaining those glorious ends to which this passion directed him. He was extremely ingenious in inventing designs, artful in contriving the means to accomplish his purposes, and resolute in executing them: for as the most exquisite cunning and most

undaunted boldness qualified him for any undertaking, so was he not restrained by any of these weaknesses which disappoint the views of mean and vulgar souls, and which are comprehended in one general term of honesty."

This is as true of Charles Peace as it was of Jonathan Wild, and as we do honour to the greatness of statesmen and conquerors who ruin worlds and destroy the homes and happiness of thousands, let us not withhold our meed of admiration from a great man like Charles Peace, who devoted his life to the minor art and craft of burglary and took humble tribute from individual citizens. In a narrow sphere he is pre-eminent. In the hagiology of housebreaking the sainted figure of Charles Peace stands in solitary grandeur—clear and illumined on the golden pinnacles of crime.

## I. HIS GREATNESS

In the drama of his life Charles Peace always cast himself for the part of hero. Students of the histrionic art will at once recognise in this a trait of greatness. Peace's exploits were one-man shows, no doubt, but then he was the actor-manager, so what could you expect? What really great actor ever disclaimed the *fât* part, full of good lines and central situations? Indeed, may we not say that it is the actor who teaches us how a reputation is achieved, and it is through the actor that the secret of greatness is made manifest?

But that Charles Peace was a really great man I cannot doubt. Take, for instance, the Whalley Range murder, committed on August 1st, 1876, for which the unfortunate William Habron was tried and convicted. How few men could have dealt with the matter with the calm sincerity and true



greatness of Peace. A day or two before his own execution he sends for the Rev. J. H. Littlewood, the Vicar of Darnall, near Sheffield, whose church and Sunday-school he affected when he lived and worked his burglaries from that simple village. To him he gives the story of the affair in business-like detail. He had "spotted" a house at Whalley Range which he proposed to "work." He did not "work" a house until he had carefully surveyed the approaches. Like the great statesmen of to-day he "explored every avenue," but, unlike these great ones, as soon as he had done so he was prompt in action. His methods of evading the police in these reconnaissances have all the simplicity of true greatness. "I was," he says, "always respectably dressed; I made a point of dressing respectably because I knew the police never think of suspecting one who appears in good clothes. In this way I have thrown the police off their guard many a time." What profound insight into the psychology of policemen.

And then he goes on to tell the good Vicar how the foolhardy officer brought his fate upon himself. He was indiscreet enough to disturb Peace at his work. The burglar jumped over a wall to escape, and being "nettled" fired at the policeman to disable him. The plucky officer closed with him, and Peace shot him dead. Here he explained to the clergyman with great earnestness: "And now, sir, I want to tell you, and I want you to believe me, that I always made it a rule during the whole of my career never to take life if I could avoid it. I never wanted to murder anybody. I only wanted to do what I came to do and to get away. But the policeman, like most Manchester policemen, was a determined man. They are a very obstinate lot,

these Manchester policemen." Some may think that there is a touch of weakness here in this anxiety about human life that falls short of the Napoleonic ideal and detracts from true greatness. But even the greatest general does not destroy, still less risk his own destruction, out of mere bravado.

The biography of Charles Peace remains to be written. There is a modest anonymous narrative of his career, with strange wood-cuts dear to humble lovers of romance, and pamphlets, Press memoirs, and what not, but no cyclopædic effort as yet worthy of the man and his greatness. Like all great men he was wholly self-educated; no Board School can blazon his name on its panels. Born in Sheffield on the 14th May, 1832, the son of a caretaker of animals in Wombwell's menagerie, he grew up in the gutters of his native city a handy self-reliant pickpocket. As a youth he played at public-house music-rooms, blacking his face and scraping tunes on a one-stringed freak fiddle of his own making, under the stage name of the "Great Ethiopian Musician, the Modern Paganini." But he was born for something higher than mere mock Ethiopian greatness, and this profession had no prizes for him.

But his talent for music was often used in his early adventures when, as John Ward, he would make love to Fanny, the housemaid, become a friend and boon companion of the servants' hall, entertain them with song and mimicry and fiddle at their Christmas party, and then walk off with the silver in the early hours of the morning.

One of his earliest and favourite disguises was that of a one-armed sailor. The hook at the end of the property arm was useful in hauling on to the branch of a tree to reach a window-sill or to grapple on to the top of a portico. Nature had gifted him

with extraordinary strength and agility, attributes which the evolutionist would explain to you showed that he was probably intended to be a housebreaker and strikingly illustrated the truth of the theory of the survival of the fittest. The course of evolution, however, never runs too smoothly. Picking pockets led to the police-court, and housebreaking, though at first successful beyond youthful hopes, received a check when our hero, at the age of twenty-two, was captured at the house of a well-known "fence," and sentenced to five years' penal servitude.

This might have broken the heart of a smaller man or lured him to safe and respectable ways. At first his great nature rebelled against his surroundings. He made wild efforts to escape. At Portland he headed a mutiny and was punished with the "cat" and sent to work at Gibraltar, where he was suspected of the murder of a fellow-convict who had "nettled" him. This poor fellow disappeared one foggy night, and his body was found in the morning crushed at the bottom of a precipice. It may have been an accident. Later on, at Portland, he settled down as a model convict. He taught himself carving and made ingenious paper models, to the admiration of the authorities. This was a period of thought, resolve and plans for future greatness. He had learned the lesson that force is no remedy, and he based his future work on the great principles of cunning and deceit, keeping force in reserve for some final crisis. Released in 1858, he married Hannah Ward and worked under the name of John Ward in the north of England with marked success. At length those obstinate Manchester police nabbed him again.

He had hidden some loot in a drain on a piece of waste land. The police found it, but left it there as

ground bait, watching the spot from an upper window day and night. Presently Peace came to fetch it. They pounced upon him. There was a wild fight for freedom, but he was overpowered. This resulted in seven years' penal servitude. Later on he did a further term of ten years. These were commuted to shorter dates, but it is sad to think how many years this great genius wasted in jail.

In 1875 his troubles seemed at an end. He had settled at Darnall, near Sheffield, and carried on the trade of a carver and gilder. From this peaceful village he made his raids on the outer world with great success. Here unhappily he made the acquaintance of Mr. Albert Dyson, a civil engineer. He and Mrs. Dyson were very friendly at first. Later on there were differences. Peace resented Dyson's conduct. He threatened and molested the pair, especially the husband. The Dysons moved across country to Banner Cross. Peace continued to molest them and Mr. Dyson took out a summons against him. Peace did not appear. A warrant was issued for his arrest.

It was a most inconvenient moment for Peace to have any truck with magistrates and the police. Even his calm serenity may well have been disturbed by recent events. He had nearly been captured at Whalley Range in August, 1876, when he murdered a policeman. In November he had sat in the gallery of the Manchester Assize Courts listening to the trial of Habron for the very murder. Though the conviction secured his own safety, yet it was exasperating to his sense of citizenship to sit silently watching a police blunder that he could not repair.

With his mind full of these worries he posts from Manchester direct to Banner Cross. He must see

Mrs. Dyson that night. It is essential that the Dysons should withdraw the warrant. There is a light in the lower room. He gives a low whistle. Mrs. Dyson comes out at the back with a lantern and finds him in the yard. He opens the subject of the warrant. Mrs. Dyson is noisy and threatening. He pulls out his revolver. She screams in fright. Dyson rushes out to his wife's assistance. He sees a figure retreating in the darkness. Dyson follows to seize the man. At the yard door Peace turns round and fires. The bullet thuds against the wall. A second shot hits Dyson in the temple and he falls mortally wounded at his wife's feet. Charles Peace, murderer, flies for his life.

The hue and cry is taken up throughout the country. The wanted man is well known to the police and can be accurately described. Five feet four in height, lacking fingers on his left hand, walking with legs wide apart, speaking as though his tongue was too large for his mouth, aged 46, looking ten years older. It would seem that Charles Peace, *alias* Mann, Ward, Parker, etc., ought not to slip through the fingers of the police.

He has many narrow escapes. He bolts direct to his mother at Sheffield. Explains to her that Dyson had a warrant out against him, so he has shot him. The good lady is horrified. Peace changes his clothes, and turning up his greatcoat collar walks boldly into the station and takes a ticket for Hull, where his wife is living. Just as the train draws out Constable Pearson jumps on board. The police are aware that Hannah Ward is running an eating-house at Hull, and Constable Pearson is told off to watch the place. So hunter and hunted, unconscious of each other, whirl through the darkness separated by a few boards.

Peace goes to the little restaurant. The faithful Hannah gives him a bowl of soup. The intelligent officer, having first reported at the police-station according to rules, makes his way thither. His heavy tread in the outer room catches the burglar's ear. He vanishes silently. The woman can give the officer no news of Charles. The officer ransacks the house. He does not wander through the garret window and search among the tiles. Perhaps had he done so he would have had to be removed like that obstinate Manchester policeman.

The next day Pearce shaves off his beard and whiskers. His facial expression he could always alter in a marvellous manner. He supplies his need for money by an office burglary and lives in lodgings near the police-station. Once forgive him the supreme folly of murdering Dyson and one must admire the sweet simplicity of his methods of evading the police. At times he travels about England, no doubt supplying his needs on the road. He is in London, Bristol, Oxford, Derby, a man with a hundred pounds on his head, well known to the police.

But he enjoys his trips. He travels on one occasion with a policeman going to the assizes at Stafford. He makes up a new face and chats pleasantly to him on professional affairs. He does not even put a glove over his maimed hand. "A policeman always goes by the face. He never thinks of looking at people's hands." That is one of his observant truths. Only a clever man would have discovered this, and only a really great man would have known that a maimed hand is less conspicuous than the constant use of a padded glove.

His wanderings continue. Had he been content to live alone and settle down by himself he might



perhaps have carried on for many years. But Charles Peace was but human after all. He loved domestic life. The cat on the rug by the parlour fire, the dogs by his arm-chair and a harmonium on which to play his favourite Moody and Sankey hymns of an evening, ere it was time to set out beneath the summer stars for the night's work. These have been his dreams and ambitions in the long hours of his captivity, and now that the hue and cry is dying down he will realise them.

It was at Nottingham that he met Susan Grey and succumbed to the spell of her fair hair and brown eyes. She seemed the very woman of his dreams to cheer his domestic life and greet him with a jocund smile in the early morning when he returned tired and soiled from the exploits of the night. Boldly and without ceremony they start life as Mr. and Mrs. Thompson. Later on good Hannah Ward joins this primitive household. The southern suburbs of London are chosen as a safe and pleasant base in which to combine the simple life and great adventures.

## 2. THE LAST PHASE

Lord Rosebery in his essay on Napoleon says : " A sure test of great men of action is the absence of lukewarmness with regard to them." How true this is of Charles Peace. At his decease *The Times* in no tepid terms denounces his career in a leading article as " a miserable and barren failure." You may say the same of Napoleon. The wise man in the street says to himself : " Can any life be really a failure which compels a whole leading article in *The Times* by way of funeral oration ? " These tributes are only for the great.

We find jailers, hangmen, lawyers, the police

themselves testifying to his qualities, proud to have known him. The common people have long ago accepted him with all his surrounding legendary exploits as the Master Criminal. In these last months of his life he was more wonderful than ever. His biographer rightly says : " From May, 1877, to October, 1878, was the most fascinating period of Charles Peace's career." In the fleeting days of those sixteen happy months what strange comedies are played out with deft skill before the final tragedy brings down the curtain.

How entirely great was the choice of Peckham as a safe ambush. I walk down Evelina Road and raise my hat as I pass 5 East Terrace. Not only did he introduce into that respectable locality his newly found lady, Susan Grey, but he persuaded his first wife to join them, and his stepson, Ward. Mrs. Ward was used to his methods of disposal and in this branch of the trade no doubt could educate Susan. They were a happy and united family, Peace passing among his neighbours as a kindly old fellow devoted to his pets, especially his famous pony, Tommy, who would at word of command lie down and die for his master and do many other strange tricks. The house was luxuriously furnished, and his concerts, tea parties and social gatherings of a domestic and respectable nature were the pride of the neighbourhood.

Dear old " Mr. Thompson "—his Peckham *alias*—was an eccentric, amiable elderly fellow. He and the unsuspecting Mr. Brion, his next-door neighbour, were engaged in working out several ingenious patents, which were taken out in their joint names. The old fellow, being a bit of an invalid, kept his bed until midday. Later on he would be experimenting in an outhouse workshop, with the

patents of course, but there was a crucible found afterwards very handy for melting silver. Then came a visit to a neighbouring tavern. Mr. Thompson never had but one drink, though he would stand many rounds, being a generous open-hearted old boy, as Peckham saw him. A quiet evening with the harmonium, over his favourite Moody and Sankey hymns, or a tune on one of his many violins—he collected fiddles from the houses he visited—and then early to bed. The tea parties broke up at eight. Mrs. Thompson (Susan Grey) always said her dear husband was getting on and needed rest. No doubt he did.

But for the really great man there is no rest, nor is there any final goal or last rung to the ladder. It is always onward and upward until the crash comes, and the envious small-minded self-righteous who cannot appreciate the real greatness of a hero, rush in upon him to destroy him, and Cæsar is no more.

Many were the narrow escapes that Peace encountered, but he seemed to live a charmed life. Once he was nearly captured by a butler. Think of the irony of it! The hero destroyed by a flunkey! It was in this way. He had entered a West End house to “work” a safe. He left his boots downstairs, ascended to the sitting-room on the second floor where his work waited him. His first care was to survey exits in case of surprise. It was a house of atrocious construction. There was no way out by the second-floor window, which looked out on to the glass roof of a ground-floor conservatory. Nevertheless, the task must be done. He turns to the safe, and in the midst of his work is interrupted by a butler, a big hefty fellow, more than a match for him. Another servant stands at

the door. There is no time for consideration. The last chance is to leap from the window. It is done in a second, and a sound of broken glass is heard "off." "That's done for him," said the butler in tones of regret. "Poor fellow, he won't want no police now to take him away."

But when they went to find the corpse and survey the damage the man was gone. He vanished, leaving no trail of blood, though badly injured. Was the faithful Tommy with his gig waiting in the wings when he made this sensational exit? No one knows. Only we learn that Mr. Thompson returned home to Peckham with an injured leg and kept his bed for some days.

There were many fine adventures, such as the Melton Mowbray jewel robbery and the Southampton safe case, for Mr. Thompson often travelled far in search of business. But he was always alone on these voyages. The south of London was worked by Tommy and himself. In all these great deeds he had no pal or confederate but Tommy.

I think these last months were pleasant months to Charles Peace. He had great prosperity, not only in big ventures but in more commonplace transactions with furniture and pianos, for we find that he left several uninhabited houses stored with the proceeds of his raids. His joy of life manifested itself in a sense of humour which developed during these last days, for I can find no trace of it in his earlier life. There was policy in his humour. He was of the school of Bismarck who said that the one thing fools would never believe was the truth.

He would enter the Peckham chemist's smoking a big cigar. .

"Nice cigar that, Mr. Thompson."

"Yes," replies Peace, smiling.

"Where did you get it?"

"I stole it."

The chemist laughed. "Dear Mr. Thompson will have his jest. Stolen," he said, chuckling to himself. "I wish you'd steal a few for me."

"Certainly," replied Peace, with a wink. "Next time I come into the shop you shall have some." And sure enough, next visit, Peace threw him a box over the counter containing the promised stolen cigars.

I like, too, that anecdote of the little tradesman whom Peace met in the train. The consequential little fellow *would* talk burglary and lay down the law about it to the great man and bored him. It was like a schoolboy meeting Euclid and criticising his views about right angles. Peace posed as a detective and the little man became more reasonable. Peace then explained that as a detective even he could break a safe open without anyone hearing him, and of course he was not as good as the high-class burglar.

The little man was incredulous and frightened. He, too, had a safe and trembled for it. But he was a sportsman and he would like to know the worst. He offered to bet the detective five pounds that he could not do it. The terms were made. Peace took the fellow's address. It was arranged that the man's handkerchief should be left in the safe, and he should go to bed in the ordinary way and not stir unless he heard a noise.

That night Peace burgled the safe, took out the handkerchief and closed the safe with a bang. Down came the terrified householder with a candle and a poker. When he saw it was the friendly detective of the morning waving the handkerchief they both laughed aloud. A couple of glasses of

whisky were produced. Peace showed the man how the safe lock was worked, and insisted on paying his fiver, complimenting his host on his good hearing and his bravery. Then he bade him good night. After he had gone the unfortunate tradesman discovered that £150 was missing from the safe, and the bet had been paid by one of his own notes.

One night Mr. Thompson did not come home. He had been working Gifford House, St. John's Park, Blackheath. He had browned his face to disguise himself as a half-caste. All went well at first. The dining-room window yielded to a jemmy, and the silver and plate were placed ready to carry off, when he was disturbed. He made a dash from the window across the lawn. P.C. Robinson was after him. In vain did Peace threaten to use his revolver. P.C. Robinson came to him with that dogged obstinacy that on several occasions had "nettled" the great man. Peace fired three shots without effect. He fired again, and then Sergeant Bacon came to the rescue. Both stooped to their quarry at once, and the great game was over for ever.

At first the police did not know the value of their prize. He was described on October 11th at the Greenwich police-court as "a half-caste who refused his name and address." They had no idea they had captured the renowned Charles Peace. Though his dark skin grew lighter, they seem to have been without suspicion of the truth until, on November 3rd, the unfortunate captive, whose nerve must by now have been severely shaken, wrote a penitent letter to friend Brion, under the name of John Ward, asking him to visit him. By this clue the police were put upon an easy scent, and on November 6th



they were able to announce that Charles Peace was in their hands.

There have been some admirers and friends of the great man who seek to cast a slur upon the faith of Susan Thompson, but for my part I think she acted, as the diplomatists would say, correctly. When her man was captured she and Mrs. Ward sold up everything they could lay hands upon and fled. But this is in accord with all the traditions. When the general is captured or slain the lieutenants are permitted to retreat. There is no real evidence that she gave anything away to the police that they did not know. It was her claim to the £100 reward, after Peace was hanged, that lacked popularity, but I think the great man himself would have chuckled at the idea of her obtaining it. To the last he wrote to poor Susan friendly letters and sent her his dying blessing.

He was tried by Mr. Justice Hawkins for the attempted murder of P.C. Robinson. I pass over his futile canting appeal to the judge. It was unworthy of him and merely bored Mr. Justice Hawkins, who sentenced him to penal servitude for life in as few words as possible. It seemed as though his first glimpse of death, disgrace and the end of all things had broken his spirit. Then he was removed to Sheffield to be tried for the murder of Dyson, and on the threshold of the scaffold, as it were, Charles Peace was himself again. There was the splendid fight he put up before they could get him into the train at King's Cross; there was his wild ribald conduct on the journey down; and, greatest episode of all, his dive through the window as the train rushed by Darnall, his old home. How the officers clung to his boot. How he fought and wriggled as the train dashed along, and how finally

his manacled and mangled body twisted itself out of their hands and fell lifeless on the permanent way—is not this story a household melodrama which will recur through the ages to rejoice new generations of youthful readers?

The world is startled for the space of an evening edition by the headlines, "Escape of Charles Peace," but alas! it is but a minute's thrill. They walk back upon the line, gather up the hero in blankets and carry him to jail. In his pocket they find a paper, pin pricked in jail, where he had thought out his last escapade.

"Bury me at Darnall  
God bless you all  
Charles Peace."

He had willed for himself a more thrilling last scene than the ancient inevitable scaffold. But to the only end consonant with his life he comes at last. His trial is short, the result certain. He hears the sentence of death unmoved, bows to his counsel, Frank Lockwood, from the dock, and departs. Now he has made his confession and his will. He, like nearly all the great heroes of Tyburn, is satisfied and content in self-righteousness and forgives his enemies and sends his blessing to his friends. Then, in Armley Jail, on February 25th, 1879, on a snowy frosty morning, with buoyant step he walks out of his cell with his old acquaintance, Marwood, behind him, and makes a last appearance in public worthy of his heroic career.

## CHAPTER TEN

### CONCERNING MORE MELODRAMAS

1. DR. BURDELL.    2. THE DRUCE CASE.
3. THE MYSTERY OF MERSTHAM TUNNEL.
4. DR. SMETHURST.    5. A BABY WITHOUT A NAME

JEREMY COLLIER says that "the business of plays is to recommend Virtue and discountenance Vice; to show the uncertainty of human greatness, the sudden turns of fate and the unhappy conclusions of Violence and injustice. 'Tis to expose the singularities of pride and fancy, to make folly and falsehood contemptible and to bring everything that is ill under infamy and neglect."

Our author then pours out his full wealth of sarcasm, learning and rhetoric on the unhappy playwrights who have offended against his view of the "business of plays," and so convinced am I of the basic sense of his proposition that I feel real regret that it is not possible to send the reverend gentleman a copy of these Dramas of the Law since I feel they would have given him real satisfaction. I now for the first time follow the innate modesty in Walt Whitman's lines :

"I conn'd old times,  
I sat studying at the feet of the great masters,  
Now if eligible O that the great masters might return and  
study me."

For I can see that these legal dramas of mine would

have greatly pleased the devout Jeremy as bearing out in full detail what he demanded of the playwrights, and no chapter would he find more satisfactory than this one devoted to miscellaneous melodramas chosen to exhibit all those qualities which he sets in his forefront as necessary to dramas of right action. Certainly no form of story does more to "recommend Virtue and discountenance Vice" than true records of legal dramas written, as friend Jeremy would have them written, with a "true relish of Decency and Honour."

### I. DR. BURDELL

On January 30th, 1857, a murder was committed at 31 Bond Street, New York, which roused the inhabitants of the entire continent to a wild pitch of excitement. In the cars, in the ferry-boats, in every hotel, bar-room or saloon, nay, in every fashionable drawing-room in the city, there was but one topic of discussion and surmise. Who killed Dr. Burdell?

Dr. Hervey Burdell was an eminent dentist, forty-six years of age. The house at 31, Bond Street was his own house. He lived there and had his rooms on the ground floor. The world knew him as a well-educated physician of intelligence, culture and position. He was accounted a man of urbanity and respectability, not unlike the celebrated Dr. Brand Firmin of Old Parr Street. One can picture him with a polished forehead, a flashing eye, a rolling velvet collar and all the smug insignia of professional prosperity.

On the morning of January 31st, when the office boy arrived and entered his room, he found the dead body of the doctor lying on its face close to the door. He brought help. At first it was thought

the doctor had committed suicide, but careful examination revealed the fact that Dr. Burdell had been foully murdered, there being no less than fifteen wounds in his body, made by a dirk or other sharp instrument, any of which might have been fatal.

It was clearly not a case of suicide. The experts reconstructed the murder much in this way. The doctor had been sitting in his large room in the chair at his desk near the gas lamp, which was found fully lighted. He was probably reading. The murderer enters behind him and strikes the first blow through the right shoulder. There are a few drops of blood on the right side of the chair, which followed the steel as it was pulled out. Then a cord or handkerchief is thrown round his neck to strangle him. The doctor rises and makes for the door, struggling. His course is traced by blood along the wall. The murderer flings him down on to the floor near the door and stabs him to death. Then he has to drag the body aside to open the door and depart. But who was the murderer? That was the question that for many months haunted the citizens of New York and cried vainly for an answer.

There is no greater joy to the worldlings of Vanity Fair than when the wall of a neighbour's house is drawn aside and you can peep into the bedrooms and the attics and even see the skeletons hanging behind the wardrobe doors. If ever a house and the secrets of it were made bare to the world it was that unhappy dentist's abode at 31 Bond Street.

It was a curious household. There was Mrs. Emma Augusta Cunningham, supposed to be a widow. She had two daughters, Augusta, about eighteen, and Helen, sixteen, also two little boys, ten and nine. She had lived there some time. She

was a woman of means. She rented a portion of the house from the doctor. He had been a friend of long standing, and on occasion they were seen about together at the Broadway Theatre and elsewhere. Later there had been visiting and staying there, a young woman, recently divorced, Miss Dimis Hubbard, in whom the doctor had taken an interest. Mrs. Cunningham did not approve of her, but she had visited the house up to the day of the murder. There were three men lodgers or boarders : the Hon. Daniel Wilmann, a lawyer of note ; John J. Eckel, in the employ of a State Senator ; and George V. Snodgrass, a young man about twenty, son of a well-known Presbyterian clergyman, a friend of Mrs. Cunningham and the doctor.

The *ménage* seemed domestic and wholesome enough, but New York became delightedly alive to a scandal when Mrs. Cunningham declared that she was the widow of Dr. Burdell, having been secretly married to him on the 28th October by the Rev. Uriah Marvine, of the Dutch Reformed Church. Police inquiries proved that the relationship between the deceased and Mrs. Cunningham had been peculiar if not altogether without precedent. He had long desired her and had paid court to her soon after her widowhood. Against the advice of her wiser friends she had gone to live at 31, Bond Street. There seems little doubt that whilst there she and the doctor had been intimate. Then came the bland respectable doctor's interest in the young *divorcée*—indeed it was said that he was visited by other young ladies, names unknown—followed by jealousy and indignation on the part of Mrs. Cunningham, who was shocked at the idea of her dear daughters being brought into contact with damsels of light behaviour.



The various quarrels between Mrs. Cunningham and the late model of medical propriety had never reached the ears of society, but they had on occasion got as far as the police-station. It appears she had been at his safe looking for some papers she claimed. He charges her with stealing a promissory note. They go to the station together. Mrs. Cunningham behaves like any other jealous injured woman, and rages round telling the police that as for the doctor "she was his wife by every tie that could be," and that she would have satisfaction of him. The police wash their hands of the matter and Mrs. Cunningham rushes off to her lawyers to start suits for slander and breach of promise.

But all this happened away back in September, and if Mrs. Cunningham and her daughter spoke the truth the marriage took place at the end of October. The suits were certainly discontinued, and among the doctor's own papers is a written statement by him to the effect that the litigation being over he agrees "to extend to herself and her family my friendship through life."

There are many ways of unravelling a mystery and discovering a crime, but the way *not* to do it is to jump at a conclusion and adopt a theory at the outset and endeavour to find facts to justify your wisdom. Yet this is the commonest blunder even among those whose experience should have taught them better. The facile mind of the particular Dogberry who was at that date coroner of New York City sprang to a conclusion, which the newspaper press of the day dinned into the ears of the public, that Mrs. Cunningham had murdered Dr. Burdell, and that she had been assisted thereto by Eckel, who had supplanted the doctor in her affections. It was the kind of melodrama that a

sordid world craves for, and the coroner set to work to stage it and mount it in lavish detail.

There are over 180 columns of printed evidence at the inquest, much of which is mere gossip and suspicion. The story the coroner had laid down in his scenario was of this sort. Mrs. Cunningham was a wicked adventuress who took rooms in the good doctor's house to entrap him into marriage. Finding this impossible, she induced her paramour, Eckel, to personate Burdell in a sham marriage, with a view of ultimately claiming her dower. Then she persuaded Eckel to help her to murder her victim.

The coroner appears to have been a blustering self-important fellow, and Henry Lauren Clinton, the leader of the American Bar, who defended Mrs. Cunningham, refused to take any part in the proceedings before him.

There was really very little evidence of importance, apart from the folly of Mrs. Cunningham's conduct with the doctor and the suggested motive of jealousy. The Rev. Uriah Marvine did not at first identify the deceased Burdell as the person who had gone through the marriage, and in the end the Surrogate did not admit the marriage, though it had probably taken place. Certainly Eckel had not personated the doctor.

There was no evidence against Eckel except that of a man named Farrell, who turned up late in the proceedings with the remarkable story that on the night of the murder he had sat down on the steps of 31, Bond Street at about 9.30 p.m. to lace up his shoe, and he saw a man pass him and go into the house. Immediately after he heard a cry of murder, and then a man came to the door in his shirt-sleeves and told him to go away. That man was Eckel.

Of course this was very serious, but at the trial the prosecution did not produce the witness, and he was probably a romancer.

Dr. Burdell, known to the world as a brilliant cultivated physician, was in private life a common character. He was quarrelsome and made many enemies. At times he gave way to melancholy and was suspicious of his surroundings. He lived a secret life of his own, and it was alleged that he entertained women in his rooms at night. He dined every day at 5 o'clock at the Metropolitan Hotel, and he was there the evening before the murder. He was last seen alive at the corner of Bond Street about nine or nine-thirty, standing alone as if waiting for someone.

But these details did not seize the public imagination nor were they dwelt upon by the coroner, and in the result Mrs. Cunningham and Eckel were found by the coroner's jury guilty of murder, a verdict which was received with great public applause.

In Clinton Mrs. Cunningham had an acute and fearless advocate. He himself states in an account of the case published as recently as 1897 that he firmly believed in her innocence from first to last. He was impressed by the evidence of her children, which never wavered or altered, and, if true, was conclusive that she could not have been present at the murder. Experiments showed that in the Cunninghams' rooms no shouts or screams from below could be heard, and Clinton convinced himself that no member of the family left their portion of the house between the evening of the 30th and the morning of the 31st. As soon as the inquest was over he made a move to prove the marriage before the Surrogate, and the evidence of the clergy-

man, who was now convinced that the parties he married were the deceased and Mrs. Cunningham, and the evidence of her daughter Augusta and a servant of the clergyman, who were present at the wedding, turned the minds of many of the public towards Mrs. Cunningham.

When the trial came on, the fact that the prosecution no longer put forward Farrell as a witness of truth showed the world and the jury the hollow shifting foundations upon which the coroner had built up his theory of the crime. The summing up of Judge Davies to the jury is a monument of careful reasoning and wise warning, in itself the most eloquent rebuke which could be administered to the coarse and bigoted misconduct of the coroner. After her acquittal the prosecution of Eckel was very properly not proceeded with. But the stupidity and self-conceit of this official had not only imperilled innocent people, it had also stopped the following up of other clues and the prosecution of other inquiries that might have solved the mystery of 31, Bond Street and answered the question that for many years was a matter of public interest.

Who murdered Dr. Burdell? Was it some private enemy, some jealous friend, or some of his lady companions, or some thief who at the last moment was disturbed or grew frightened at what he had done? Such is the strange vanity of criminals that on several occasions in after-years condemned men confessed to the crime with considerable detail, in the morbid hope that after they were executed their names would be associated with so famous a crime. But the authorities non-suited these aspirants to infamous immortality, and the murderer of Dr. Hervey Burdell remains obscure in his anonymity to this day.

## 2. THE DRUCE CASE

More than fifty years ago I was a constant visitor to the Baker Street Bazaar. At a stall on the right hand as you went in you could purchase a little Chinese cedar-wood box full of coloured chips, which you dropped into a bowl of water and they turned into sweet-scented flowers. That was a real mystery.

I make no doubt that I often saw Thomas Charles Druce, the proprietor of that wonderful emporium, but that he was a bigger mystery than my Chinese flowers never dawned upon me. If I thought about him at all, which I doubt, it was merely as a purveyor of toys, in which capacity I still regard him as a man of uncommon sense and good taste.

To most of his customers Druce appeared to be but a shopkeeper. A super-shopkeeper, if you will, whose name will be written on the roll of fame with Shoolbred, Snelgrove, Maple and the brothers Heal, but still a keeper of a shop and nothing more. Only to a select and chosen few was his secret known, and it was nothing less marvellous and mysterious than this—Thomas Charles Druce was really William John Cavendish Scott Bentinck, 5th Duke of Portland!

When at the beginning of this century George Hollamby Druce, his grandson, unfolded his wonderful chain of evidence and told the Hyde and Jekyll story of his grandfather's career, the world stood amazed but more than half convinced that his claim to the dukedom was a just one. It is a complicated story, and to explain it clearly let us pretend there are two entities posing as one. We will call the proprietor of Baker Street Bazaar "Druce the Duke" and the other fellow "the Welbeck Duke."

Now William John, the Welbeck Duke, was

born in 1800, and he seems to have lived a plain and simple ducal life at home, as far as one knows, until 1816. Then it is said he took to galloping on horseback across country from Welbeck, in Nottinghamshire, to Bury St. Edmunds to pay court to a charming girl of his own age, with several thousand pounds of her own, named Elizabeth Crickmer. But the most ardent lover cannot ride eighty miles a day, week in and week out, and so the Welbeck Duke elopes with his girl lover and marries her at St. James's, Bury St. Edmunds, by licence, on October 19th, 1816, in the name of "Thomas Druce of this parish."

The Welbeck Duke, who at that time was only a cadet and younger son of the noble house, must now have disappeared from his family for some four years. Meanwhile Druce the Duke lives at Bury St. Edmunds with his wife as a shopkeeper of some sort, and has several children, two of whom, George and Frances, play an important part in the story.

In June, 1820, Druce the Duke basely deserts his wife and children, and the Welbeck Duke returns to the dukeries and accepts a commission in the Army and becomes Member for King's Lynn. The children's maternal grandmother is without means, and George is sent to sea and Frances remains with relations at Yarmouth.

For fifteen years Druce the Duke is unheard of. Then, in 1835, when George, his son, comes into Gravesend on his ship, the boy is suddenly sent for, taken off to an outfitter, rigged in new clothes, and carried up to Baker Street Bazaar, and there meets his long-lost parent, who is now a wealthy shopkeeper. He remembers meeting Annie Berkeley at this time, and Druce the Duke tells him she is



an Aunt. George receives some education, remains a sailor and becomes a second mate. On his mother's death, in 1851, he emigrates to Australia. He is the father of George Hollamby Druce, the ultimate claimant, who was born in 1855.

How Druce the Duke dealt with his wife Elizabeth is not clearly stated, but he seems to have supported her in some way after 1835. Frances, his daughter, he places with Mrs. Tremaine, another alleged Aunt. She remembers being brought from Yarmouth in 1836, and finding her long-lost father Druce the Duke, a man of great wealth, with a house in Edgware Road, a residence at Brighton and a country house at Hendon.

The Welbeck Duke was a woman-hater and a recluse, and died unmarried. He avoided society and spent his time busying himself with his hot-houses and green-houses and the wonderful underground buildings at Welbeck. In his early days he was a patron of the turf and it is said that with his winnings Druce the Duke found the £100,000 with which to start the Baker Street business. The idea seems to be that the hermit of Welbeck got weary of his misogynist life and that in reality he was a complete lady-killer, and this side of his character was made manifest in the career of Druce the Duke, who married twice and left many children.

There seems to be no very direct evidence about these things, but then it is all a long time ago. Elizabeth Crickmer, in her old age, used to tell her children that their father "dropped from the clouds" and had no relations, but that seems to fall short of droving that he was a duke.

There was a story of the Welbeck Duke that he had a quarrel with his brother George and struck him a blow in the region of the heart, which killed him.

The dispute arose over a lady named Anne May Berkeley. The Welbeck Duke never forgave himself for injuring his brother, although the doctors seemed clear that the blow was not the direct cause of his death. Druce the Duke, it was alleged, used to say to several persons: "I never intended to kill my brother, I only struck him in self-defence." There seems evidence that both Dukes were obsessed by a fear of arrest and punishment over a similar matter. It was also asserted that Druce the Duke's second wife, whom he married in 1851 and who is described in the certificate as Annie May, is really the Anne May Berkeley about whom the brothers quarrelled. This suggestion entails the proposition that the second Mrs. Druce must have been fifty-six years old when she married, yet had several children afterwards and lived to be over a hundred.

I cannot help thinking that the extraordinary habits of the Welbeck Duke, who came into his dukedom in 1854 and was the centre of many strange legends, made people very ready to credit any new extravagant story about his career. The Welbeck Duke hurried from place to place in a mysterious way. He would order a closed carriage to be left overnight at Welbeck equipped for a journey. The next day, still closed up and secret, it made the voyage to London on a railway truck. Horses met the carriage at the terminus and drove it to Harcourt House. Sometimes the Duke was in it, sometimes he was not.

It was commonly said in after-years that many people knew in his lifetime that Druce the Duke was the real Duke. It was remembered that both men were vegetarians, or nearly so. But photographs show that Druce the Duke was a veritable beaver with an accomplished beard. The Welbeck

Duke had only side-whiskers. Believers, however, pointed out that the hairdresser from Truefitt's visited Harcourt House daily, and that in the picture of Druce the Duke it was obvious his beard was artificial.

The popular belief that there was an underground passage between Harcourt House and the Bazaar, along which the Welbeck Duke made his way to business, was not thought extravagant, in view of the vast tunnelling works at Welbeck itself. For over twenty years the Welbeck Duke had spent £100,000 a year and employed an army of over 1,000 workmen on miles of underground passages and palaces. Nothing seemed impossible to imagine about such a strange eccentric creature.

But, rumours and strange stories apart, the real essence of the ultimate claimant's case was summed up in the answer to the question, did Druce the Duke die in 1864, and was he buried in Highgate Cemetery on December 31st of that year?

The theory of the claimant was that in 1864, Druce the Duke found playing at Hyde and Jekyll was becoming tiresome. He fancied that some of his employees had already guessed his secret. If we can believe some of the witnesses who afterwards were ready to come forward, the secret was at this time fairly common knowledge. Then it must have been impressed upon him what a muddle would ensue if either the Welbeck Duke or Druce the Duke died by accident or otherwise. If Druce the Duke died, then within a few days there would be no Duke of Portland, and if the Welbeck Duke died, there would be no one to run the Baker Street Bazaar. So the claimant conceived that Druce the Duke, at last recognising the inconveniences these things might cause, made up his mind to go into

voluntary liquidation, as it were, and wind himself up as Druce, once and for all, by means of a bogus death and a mock funeral.

There was the usual death certificate, signed by Herbert Druce, his son, who was present at the death, stating that Thomas Charles Druce had died on the 28th December, 1864, aged 70, at Holcombe House, Mill Hill, Hendon. There was, it is true, no doctor's certificate. It was suggested that Druce's second family, or certainly the second wife, knowing all the circumstances, would aid and abet Druce the Duke in disposing of himself in this way, if only for the valuable estate he proposed to leave them.

In after-years the story took a strange shape of some lead being stripped from the roof of the Hendon house to be put in the coffin, and it was stated that many suspicions were rife, and rumours spread abroad at the time, that the burial was a bogus affair. But the most remarkable evidence of all was contained in statements of employees and friends that Druce the Duke was seen on many occasions after his death at the Baker Street Bazaar, and that the manager had openly stated that everyone knew that the business belonged to the Duke of Portland, but that no one was supposed to say anything about it. How the mystery started, who first preached the fantastic creed that these two human beings were one and the same man, and who invented the preposterous story of the bogus funeral and the empty grave at Highgate it is impossible to say. But the story flew from lip to lip, and long before it reached the law courts was credible gossip of the clubs and bar-parlours and street corners, growing in volume and stature every day.

It seems psychologically certain that, once you

begin a story of scandal, mystery or miracle, it spreads like fire or disease through the community until it becomes such a danger centre that it is necessary to take measures to stamp it out and put an end to what has become a public nuisance. It is curious, too, how these legends absorb the thoughts of the feeble-minded until, like little children, they begin to imagine themselves persons in the play, with real parts to enact, real memories to relate, and their vanity, conceit and low moral fibre lead them as far as serious perjury and crime, in an endeavour to pose as a character in the legal drama.

Professor Swift tells us that "one of the causes of unintentional perversion of memory is the constant talk that an exciting occurrence produces," and this is well exhibited in the story of the Druce case, which at the end of last century strangely occupied the minds of the idle and curious. All sorts of absurd legends were told of the Duke occasionally haunting the Baker Street Bazaar, of employees who could and they would unfold strange tales of funeral men who knew the truth about the Highgate grave. Round this shrine the legends of Marylebone wove a thick veil of romance. Visitors looked at it with awe. For beneath these formal stones lay the answer to a mysterious riddle. Scoffers might smile and speak sneeringly of the idle tales that passed for testimony, but the man in the street had got seisin of a mystery and hugged it to his ample heart.

And when the claimants came forward everyone felt there was one witness to be called, if you could subpoena him, who would, with the accompanying affidavits and recollections of ancient denizens of Baker Street and elsewhere, practically settle the question for ever. The witness that was wanted

was the owner and occupier of the grave in the Highgate Cemetery. If there was a body of a man in the grave, and especially if the body was shown to be wearing a beard, then beyond all doubt the story of Druce the Duke was a myth, and George Hollamby Druce and his advisers admitted as much. If, however, there was, as was alleged, only a lump of lead in the coffin, then undoubtedly it went far to furnish proof of one of the weirdest and strangest stories of a double life that was ever brought into a Court of Justice.

The first claimant to come forward was Mrs. Anna Maria Druce, widow of Walter Thomas Druce, son of the late Thomas Charles, who had by 1898 heard the strange rumour that her father-in-law was not, as his tomb-stone asserted, sleeping in Highgate Cemetery, but that all that had been placed in his coffin was a lump of lead.

If this were really so, it was clearly her duty to her little son to have the matter thrashed out, as the truth or falsehood of it involved his inheritance from his grandfather. The strange story, therefore, was brought before Dr. Tristram, Chancellor of the diocese of London, who, sitting in the Consistory Court at St. Paul's Cathedral, granted her a faculty to open the grave and ascertain the truth of the matter. But solicitors now intervened on behalf of another brother and of an executor. They entered a caveat, as their clients objected to the old man's remains being disturbed. There were marches and counter-marches from Consistory Court to Probate Court and thence to Court of Appeal and back again. Some judges thought one thing, others differed with great learning, but the widow was nearing success when the cemetery company joined in the fray.



Their view was that it might injure trade and annoy their customers if this sort of thing became common. They applied to the King's Bench for protection, and the judges of that court decided that a Consistory Court has no jurisdiction to order the disinterment of a body or interfere with the business affairs of a cemetery company. Mrs. Druce gained nothing by her litigation, and Thomas Charles or the lump of lead, whichever it was, was allowed to rest in peace in Highgate Cemetery.

The general public were not at all interested in cemetery amenities. They wanted a solution of the mystery they had invented and worshipped. If Druce of Baker Street was not Druce at all and never died and was not buried, who was he and why did it all happen?

Mrs. Druce's answer to that question was that Druce was, in fact, the 5th Duke of Portland. Her evidence was certainly remarkable. Some able editors, like the late Sir Arthur Pearson, were convinced that her story was true. Others regarded her testimony as a farrago of midsummer madness. Popular opinion chivalrously sided with the lady, and when the cemetery company baulked the mob of its ghoulish pleasure of searching the Highgate grave there was much disappointment and regret.

But the drama was not ended. In 1905 a new claimant from Australia appeared in George Hollamby Druce, a grandson of Thomas Charles Druce by his first wife. Not only did he claim to share in the estate, but if he could have established his claim there is no doubt that he was the rightful Duke of Portland. When it was heard that his case was to come before the courts everybody once again was heard discussing the possibilities and improbabilities of the mystery of Mr. Druce.

The mainstay of the litigation of 1898 and of this new claimant was Mrs. Margaret Jane Louise Hamilton, an old lady who said she had known the Duke of Portland from very early days. Her father had been a great friend of the Duke and knew all about his double life, and she gave many details of her own first-hand knowledge of the affair. The most remarkable statement she made was that Druce told her himself before his alleged death, "I am going to die; I am going to do away with Druce," and her father had said to her that Druce was at Baker Street on the very day of his mock funeral.

The Claimant had put forward his case and printed some of his evidence before the matter came into court. He was not a man of means, and he received a large amount of popular support and monetary assistance. He decided to commence hostilities by prosecuting Herbert Druce for perjury.

In the proceedings in 1898 this gentleman had made an affidavit in which he had detailed his father's last illness and sworn that he had died on December 28th, 1864, between one and two in the morning, that he had seen him placed in his coffin and had carried out the funeral arrangements. The averment was that Druce did not die, that the funeral was a mock one, and that he lived on as the Duke of Portland until 1879.

The case came on for hearing before Mr. Plowden in 1907, and created the greatest excitement. It was known that the Claimant had brought witnesses from America and elsewhere, and it was understood that there was abundant testimony that Druce had been seen since the day of his funeral.

The first witness was Mr. Richard Caldwell, an old gentleman of 71, a retired accountant of Richmond, Virginia. His story was so wildly improbable

that it seemed to some people worthy of belief merely on that account. He told the Court that he had come to England in 1864, and had met Sir Morell Mackenzie, the throat specialist, who was very interested in a cure for nasal disorders which he, Caldwell, had discovered among the gypsies of India. He went on to say that Sir Morell took him down to Welbeck to the Duke of Portland, who was suffering from nasal trouble, and that he had applied his remedies and cured him. For these services he received £5000 and another £5000 by way of presents.

Caldwell said that he had stopped at Welbeck for a couple of months, but a great part of the cure was performed at Baker Street, where the Duke was only known as Mr. Druce. Here he met Annie May, Druce's second wife, and her children. When his friend decided to get rid of his Druce personality Caldwell was chosen to assist him. He it was who found a carpenter to make a box to hold the 200 lbs. of lead which was placed in the coffin. He told the Court all about the mock funeral and the fifty carriages starting from Baker Street, and after the event he had been down at Welbeck again and seen Mrs. Druce there with the Duke.

But the retired accountant and nasal specialist was outrivalled by Mrs. Mary Ann Robinson, a lady about fifty-six, who came over from New Zealand, bringing with her a diary and other papers which were going to establish clearly that Druce and the Duke were one and the same person. This precious diary was unfortunately stolen from her in the City. Her handbag was snatched out of her hand whilst she was looking into a shop window, and the Claimant complained that many of his documents suffered the same fate. It was whispered that the

agents of high persons were prowling about seeking to destroy evidence, but the other side openly suggested that the disappearance of these documents was no mystery at all.

Mrs. Robinson's solicitors had a copy of the diary, and the lady could tell the Court the contents. Her father had been a tobacco planter in Virginia, and in 1861 she came to England with her Aunt and went to school at Tunbridge Wells. She had gone to Gad's Hill to stay with Dickens, whom she alleged she knew intimately. His letters to her had unfortunately been stolen on board ship. Dickens and Druce, it appears, were great friends. She met Druce at some theatricals at Gad's Hill, and she saw a good deal of him at Baker Street afterwards. When she was eighteen Dickens took her down to Worksop, where she saw Druce without his beard, wearing blue spectacles. In 1868 she had been to Welbeck and seen Druce there, and he gave her mysterious letters to carry into the outer world. He never told her about his pretended death. She acted from time to time as his "outside correspondent."

Margaret Jane Louise Hamilton, the lady who had made affidavits in the Probate proceedings of 1898, and who was indeed the fount and origin of the whole proceedings, again repeated her early memories of the extraordinary Druce, and detailed his confession that he was going "to do away with Druce."

There were other witnesses, many of them honest worthy people, whose memory, or want of it, was very unconvincing, and then the defendant's first witness, Miss Bayley, was called, an old lady of seventy-seven, who had been with Druce since she was fifteen. She gave a full account of Thomas

Charles Druce's last illness and death, and no one who heard her but was satisfied that she was speaking the truth, the whole truth, and nothing but the truth.

By this time the defence came to the conclusion that it was time for them to take active steps against the enemy. A warrant was issued against old Mr. Caldwell for perjury, but he had been too quick for his opponents and had already shipped to America. Then the public learned with much satisfaction that the relations had at last consented to end the business once and for all by allowing the grave in Highgate Cemetery to be opened.

On the last day of the old year, 1907, on a cold bleak morning, Dr. Pepper, Sir Thomas Stevenson and the photographers and undertakers' men arrived at Highgate with the necessary faculties and licences to open the grave. Tarpaulins were spread on the ground, and trestles placed below the electric light, and the coffin reverently raised to earth. The name-plate was plainly visible :

THOMAS CHARLES DRUCE,  
ESQUIRE.

*Died 28 December*

1864

*In his 71st year.*

The undertakers' men cut through the outer lead shell, and pulling it away brought with it the inner wood casing. There, exposed to the eye of man and the lens of the camera, was displayed the shrouded human figure of an aged bearded man, who had walked the earth for seventy years, and passed away from it under the name and title of Thomas Charles Druce.

The mystery was at an end. The bubble had

burst. As Mr. Plowden sagely remarked, in dismissing the case against Mr. Herbert Druce, "the case is an illustration of that love of the marvellous which is so deeply ingrained in human nature, and is likely to be remembered in legal annals as affording one more striking proof of the unfathomable depths of human credulity."

There remained only the witnesses to deal with. Richard Caldwell was extradited and afterwards declared insane. Mary Ann Robinson pleaded guilty to perjury and was sentenced to four years' penal servitude. Mrs. Hamilton was tried and convicted and sentenced to eighteen months' hard labour, the length of her sentence being reduced on account of her age. She declared to the end that she was not guilty, and I have often thought that she may have deceived herself into the belief that there was substance in her story, and repeated it so often that she at last believed it to be true. Such a condition of mind is not unknown in the psychology of women mediums and other traders in the marvellous.

Indeed, the story of the Druce Mystery is not without its moral for a modern generation always seeking after some new thing and very ready to believe with Tertullian that it is true because it is impossible.

### 3. THE MYSTERY OF MERSTHAM TUNNEL

Readers of Edgar Allan Poe will remember his masterpiece, *The Mystery of Marie Roget*, whose sudden disappearance produced such intense excitement in Paris, and whose atrocious murder was a problem too difficult for the Parisian police to solve. Had Edgar Allan read the story of Mary Money he might have solved the mystery of her death, but



the police made nothing of it. There were various theories put forward at the time. Seven years afterwards these were reconsidered and revised. But the solution, whatever it is, will always remain a mystery. The last act of the drama will never be written. The scenes that were played out are peculiarly horrible and extraordinary. They are of the kind that lovers of the Grand Guignol revel in. There is a certain fascination in mere horror which finds its place in drama. But it would be impossible to invent stranger tales of terror and mystery than the stories of Mary Money and her brother Robert.

Mary Sophia Money was a pleasant girl of twenty-two, who was in September, 1905, working as a book-keeper for a dairyman at 245 Lavender Hill, Clapham Junction. She had been in her situation for over a year. She was in good favour with her neighbours, who one and all spoke well of her as a kindly girl of good reputation. There was a very honest young fellow near by who wrote letters to her and walked out with her, and she had other friends and acquaintances suitable to her class. No one suspected her of any social intrigue, nor had she, as far as appeared, ever absented herself from her work or been away from the household where she lived for any length of time.

On Sunday evening, about seven o'clock, she left the house, telling her fellow assistant that she would not be long and was going for a walk. Her dress contained no pocket. Round her neck was a flimsy silk scarf like a motor veil. She carried in her hand a handkerchief and a small black knitted purse with money in it. At No. 2 Station Approach, Clapham Junction, she entered a sweet shop a few minutes after seven, and bought six pennyworth of chocolates. At that time she was alone. The lady who

served her knew her well and was sure no one was waiting for her outside the shop. She mentioned that she was going to Victoria. From that moment no one, as far as the world knew, ever spoke to the poor girl again.

About five minutes to eleven o'clock on the same Sunday night a sub-inspector of the South Eastern Company was patrolling the Merstham Tunnel. There were men at work relining the brickwork. He entered the tunnel at the Coulsdon end, and before he came to the outlet he found what appeared to be a bundle of clothing lying between the down line and the tunnel side. He turned his lantern upon it and was horrified to find it was the corpse of a woman terribly mangled by the wheels of a train. The body was still warm. He ran for help to Merstham Station, and the body was removed to Merstham, and a doctor sent for, but the poor woman was beyond human aid.

The injuries were very terrible. Both thighs were fractured, the left leg only hung by a shred, a wheel had eviscerated the lower part of the body, and a portion of the fluffy scarf was pushed into the brain. The police constable reported, too, that he found about a foot of this scarf wedged into the woman's mouth, apparently gathered up from the knot under the chin and thrust down the throat. Unfortunately he pulled it out before any experts could examine it. The doctor who first saw her and examined the remains with the police constable came to the conclusion that the woman had been gagged by someone who was travelling in the carriage with her, and thrown out into the tunnel through an open door by a person of considerable strength. No money, purse or railway ticket was found.

A police description was issued on the Monday, which included the laundry mark 245, which was the number of the shop at which Mary Money was employed. It appeared that she had a brother living at Kingston Hill. He, too, was in the dairy business. By Tuesday he seems to have heard that his sister was missing. He went down to Merstham and recognised the remains.

The Press representatives who saw him describe him as a young and prosperous-looking dairy farmer. He has a sad task before him, and they are naturally sympathetic and respect his sorrow. The police take him to identify the remains, which are locked in a dark shed. They illuminate the grim scene with a flickering stable lantern. The young man bears himself bravely. There is no doubt it is his sister.

The inquest threw little light on the affair. The young fellow who had walked out with her had clearly never been in her company during that day. The evidence of railway men and others, who thought they had seen her in company with someone, was of little or no value and very vague and contradictory. There was no trustworthy evidence that anyone ever saw her after she left the sweet shop. Robert Money, her brother, was merely called as a witness to identify the body. Afterwards, it was alleged that friends noticed a strangeness in his manner, and it was asserted that he complained to some of them that the police suspected him. As a matter of fact he was not suspected, and no questions were asked of him as to his movements. Other witnesses were examined as to their movements and accounted for them satisfactorily.

There were experts who favoured the theory of suicide, but Dr. Wilcox was satisfied that the bruises

on the right arm and wrist were not due to contact with the train but were inflicted. He considered there was evidence to show that she was attacked and then jumped or was thrown out of the train whilst she was alive. If the police officer is to be believed—and there is no reason to doubt his accuracy—the poor girl was choked with the scarf, which was stuffed down her throat, and then thrown from the train into the tunnel.

Who did it and why? That is the mystery which probably will never be solved. There seemed to be no clues to follow up, and the affair was forgotten or only remembered as an unanswered problem in the history of crime. No one seems at the time to have taken any note of the demeanour of brother Robert. It is not likely that he betrayed any peculiar emotion over his sister's death, since students of criminology tell us that moral insensibility is a characteristic of the instinctive and habitual murderer.

It seems harsh to use such a phrase in relation to a blameless milkman, but we cannot but wish some eager detective had paid more intimate attention to the movements of brother Robert. After his sister's death we hear nothing of him for about a year. Then he appears to have sold his share of the milk business for £1000, which he invested in house property in Kingston, the rents from which seem to have been his sole legitimate income.

We must now occupy ourselves with a different history. About 1907, two sisters, Florence and Edith, were living with their parents at Clapham. Florence became acquainted with a fascinating young fellow named Robert Hicks Murray. He had plenty of money and had been a captain in the Gordon Highlanders. He spoke of his people as

being in Scotland and on the continent. His father was a barrister at Watford. He persuaded Florence to live with him at a house in Clapham, which he furnished for her.

He, too, had property in Kingston, so he said, and also drew money for Army work. He had a bank account, and his affairs, whatever they were, flourished. There were two children of this union, and for a year or two Captain Murray was very kind to Florence and her children. He had no regular business. He rose early, helped in the domestic duties of the house, then strolled on the Common until dinner time, after which he went to a cricket match or a boxing match, so he said, and returned to tea. He was very fond of the theatre and the music hall. He used to take Florence to the play or the halls. At first they went to the stalls and dress circle, but latterly they had been content with the upper circle or pit. Sometimes he was away on Army or other business.

During these years, although he was kind and generous, Florence was somewhat afraid of him. He was a strong muscular man and very passionate at times. She had doubts about his identity, and once he caught her searching his pockets to look at his letters and threatened to kill her. She seems to have surmised that he was not all he pretended to be ; but, though she lived with him for several years, she had no knowledge of the channels from which he obtained money except what he told her about his rents from Kingston and the alleged Army business, on account of which he said he drew pay.

In the summer of 1910, Florence's sister, Edith, came to see them. The fickle Murray fell in love with her at first sight. Edith, on her part, seems to have been only too ready to meet his advances.

They were married at once, but the Captain did not wholly desert his first love. He lived at various places with his real wife, and would return to spend a few days from time to time with Florence and her children.

Towards the end of 1911, the cost of two establishments seemed to be exhausting his resources, and he told Florence that he had sold his Kingston house property. In July, 1912, he took her with her children down to Eastbourne, where they went to some rather poor lodgings and passed under the name of Stirling. Here he left her very much to herself. For at the same time he was living, unknown to Florence, in a better part of Eastbourne with his real wife, Edith, and her child, for whom he had taken a villa in the name of Charles Richard Mackie, posing as an American.

On the morning of Saturday, August 18th, the housekeeper at the villa was told that Mr. and Mrs. Mackie would not require her services for a time, as they were going away, and would send her a wire when they returned. The tradesmen were told not to call until Tuesday. Edith was last seen alive at about 6.40, when she was out shopping. There is no doubt that the husband shot his wife and child on Saturday night and locked the bodies in a room on the first floor.

On Sunday afternoon he went to fetch Florence and the children and their luggage. He told her that a brother officer named Mackie had lent him a villa and they would go there. He took their luggage to the railway station and put it in the left-luggage office, and on his way to the villa purchased two cans of petrol. He then took Florence and her children to the empty villa, explaining to her that the owner had locked the door of the first-floor



room, as he had left his silver there, and she was not to open it.

That night he shot Florence whilst she was in bed, and, believing he had killed her, went into the room where his children were lying and shot them dead. Then he poured the petrol over their bodies and set fire to the bed, and as the flames arose turned his revolver upon himself and ended his life.

Florence struggled out into the street and saved her life. The flames were put out, and the remains of Murray, Edith and the three children were taken possession of by the police. In the house was found a note signed C. K. Mackie, stating that he was absolutely ruined and had killed everyone dependent upon him.

It was the facsimile of this letter published in the Press that disclosed the identity of Murray or Mackie. A relative who saw it said at once, "That is Bob's writing," and the murderer was clearly identified as Robert Henry Money.

That this man was a typical homicide there can be no question. This does not, of course, prove that he was the murderer of his sister, but it is unfortunate that his movements on the night of her murder were never traced. What induced this dairyman to pose as an Army man with connections in Scotland and elsewhere? What were the sources of his wealth? What was the business which called him away from home? These are riddles which must always remain unanswered.

#### 4. DR. SMETHURST

I have before me a single sheet of aged yellow note-paper. It is a letter written from Surrey County Jail on August 22nd, 1859, to my father, Serjeant Parry. The agony of the writer's mind

seems yet to be alive in the faded brown ink sputtering from the lines of the letters as if the pen was guided with difficulty by a trembling hand.

The opening phrase told of the hopeless tragedy of the writer's position :

"My dear Sir,—What an awful state for an innocent man to be in—his days numbered and for having committed no crime."

On the previous day, after four days' trial at the Old Bailey, Thomas Smethurst had been found guilty of a wicked and cruel murder. The judge, who was convinced of his guilt, had summed up strongly against him, and the jury had agreed upon their verdict in less than forty minutes.

The forcible eloquence of the speech for the defence was unavailing. Weighty evidence given by Dr. Tyler Smith and other experts was brushed aside by an impatient jury. The wretch was doomed. Here he was in the condemned cell in Surrey Jail obstinately protesting his innocence and waiting for the hangman.

Dr. Thomas Smethurst was a rogue, and an unpleasant rogue at that. But whether or not he murdered Isabella Bankes is a question which turns in a great measure upon expert medical testimony.

The human story of his actions, which prejudiced the jury so greatly against him, might be the theme of one of those drab domestic dramas that delight the audiences of provincial repertory theatres.

In November, 1858, Thomas Smethurst, a retired medical man of fifty-four, was living with his wife, who was twenty years his senior, at a boarding house in Rifle Terrace, Bayswater. They seem to have had private means. His medical qualifications were not of the highest—nothing more reputable, indeed,

than a licentiate apothecary who had taken out a foreign medical degree.

In his early life he had been imprisoned for obtaining money by false pretences. He no longer practised medicine and seems to have travelled and lived on his means.

To the boarding house came Isabella Bankes, a lonely spinster of forty-three, described as being a woman of delicate health. She was readily attracted by Smethurst, who posed as a man of forty-eight, and seems to have made love to her at once. The respectable landlady, Mrs. Smith, was so outraged by Miss Bankes' lightness of behaviour in carrying on with a married man, that she gave her notice to quit, and on November 29th she left.

On December 12th Smethurst followed, leaving his wife behind, and on the same date he and Miss Bankes were married—or rather committed bigamy—at Battersea Parish Church.

After this sham marriage the parties lived at Old Palace Gardens, Richmond. They seem to have been happy, though from the first Miss Bankes was in ill-health. Smethurst often went to town for the day, and on occasion visited his real wife, whom he continued to support.

He declared, before sentence, that she knew all the circumstances of his living with Miss Bankes. After the trial Mrs. Smethurst wrote to the papers to say that her husband was a man of humane character and amiable disposition, with whom she had lived in perfect happiness and content for thirty years. These were the three sides of the human triangle which was soon to be a public proposition of intricate difficulty.

Toward the end of March Miss Bankes was seriously ill. It was known after her death that she

was expecting a child, but the doctors were not aware of this. Dr. Julius was called in by Smethurst on April 3rd. In the midst of her illness she was moved by Smethurst to 10 Alma Villas, on April 15th.

Here Dr. Bird, Julius's partner, attended her, and, as she grew worse, Dr. Todd, a specialist, was called in to see her on April 28th. In spite of their remedies she grew worse, and they formed the opinion that she was being given an irritant poison which was destroying her life.

Miss Banks received money from two sources. She was entitled to the life interest on £5000, and she had £1740 lent on mortgage. On Sunday, May 1st, a solicitor, at Smethurst's request, brought to Miss Banks for execution a will, leaving all her property to Smethurst. This she signed in her maiden name.

On the Monday the doctors communicated their suspicions to a magistrate. Smethurst was arrested on a charge of administering poison, but was released on his own recognisances. On Tuesday, May 8th, Miss Banks died. Smethurst was re-arrested and charged with the murder, of which he was convicted in August.

The instinct of a jury in trying a case of murder readily fastens upon the question of motive. If there is a strong motive, and the accused possesses means of carrying out the crime, a jury is apt to step lightly over the gaps in the continuity of proof. A cynic once said that in a case of murder by a husband or wife the relationship is in itself a sufficient evidence of motive, but let us hope that no jury would follow so base a line of thought.

Smethurst may have had many motives. There was the £1740, for instance, but it should be

remembered that he left it until the very last moment to secure this ; and by the woman's death he clearly lost his participation in her life interest in the £5000. Of course his relationship with Miss Bankes, the fact that he had committed bigamy, that she was expecting a child, that her relatives (she had been visited by a sister) might make inquiries as to his antecedents and prosecute him—all these things were possible motives for a wicked man to commit a murder.

When Smethurst was arrested, a letter to his real wife was found in his pocket. In it he said that he had not been able to leave town in consequence of his medical aid being required in a case of illness, that he hoped to see her soon and would be "with her about the 11th." But all this seems as consistent with the knowledge that the woman was dangerously ill and probably dying as it is with murder.

The fact that he changed his lodgings when Miss Bankes was very ill, because, as he said, the rent was raised four shillings, had an ugly look. At the first lodgings the landlady and her daughter waited on the sick lady. During the last three weeks of her life at the new lodgings Smethurst himself waited on her day and night. He refused to hire a nurse, on the ground of expense, though he had in his pocket £70 of Miss Bankes' money, the quarter's dividend of her life interest.

Although at Old Palace Gardens he had invited her sister to come to see her, he now wrote to the sister that the doctors had forbidden her visits. The doctors denied on oath that they had done so. To the solicitor to whom he went in haste to draft a will and bring it to the sick woman on Sunday he seems to have made several false statements. It was these matters, small in themselves, trifles light

as air, but showing the prisoner in the dock to be a guilty, immoral, undesirable person, that seemed to the jury strong confirmation of their suspicions, amounting indeed to absolute proof.

But for the defence there was much to be said. In the first place there was no evidence whatever that Smethurst was in want of money. He seems to have had sufficient if not ample private means, and poverty was not suggested. Then the evidence was that directly Miss Bankes had been taken ill Smethurst had treated her with kindness, that he had invited her sister to see her, and that he had called in three doctors to attend her. Further, there was no evidence that he had poison in his possession, or had purchased some at any time, nor was any found in a single medicine bottle, nor, indeed, did the prosecution prove what poison, if any, it was that killed her.

At the trial a remarkable incident occurred. Dr. Taylor, who had made an analytical examination and discovered arsenic, appears in his experiments to have used copper gauze which in itself contained arsenic. He had thus only extracted from the substance he was analysing arsenic that he himself introduced into the experiment by means of his apparatus of copper gauze. This was a matter seriously disturbing to the public mind, for the common sense of the average citizen is always wary of leaning too much upon the ready prop of expert evidence, and is uneasy about hanging a man upon the authority of a chemical formula. The body of medical evidence called by the defence, which went to show that the woman most probably died of dysentery, and was not poisoned at all, was deserving of far greater attention than it received from either judge or jury.



The testimony of a leading obstetric physician like Tyler Smith, then at the height of his professional career, more than outweighed the evidence of the three doctors who had failed to cure the woman. Their diagnosis of poison was made in ignorance of the truth of the woman's condition, which the prisoner's doctors considered so important a feature of the medical history of the deceased.

After the case was over the great physician, Richard Quain, wrote to Serjeant Parry a letter detailing a similar case which he had been called in to attend. This was published with his leave and forwarded to the authorities.

In those days a prisoner could not make a personal statement to the jury, and I have often wondered whether, if Smethurst had been allowed to give evidence, it would have enabled him to prove his innocence. Serjeant Ballantine, who prosecuted him, and Chief Baron Pollock, who tried him, and many able physicians who gave evidence in the case, continued to believe that he was guilty and that the verdict of the jury was founded on sufficient evidence.

But the public was profoundly uneasy in mind. It was perhaps a fortunate matter for the poor wretch sitting in jail awaiting the end that his trial took place in the summer holidays. The newspapers had columns to fill, and the public were in want of a topic. Smethurst, the alleged innocent man, whose date of execution was fixed for September 1st, soon became the one subject in the country's thoughts. Day by day leaders were written setting out the shortcomings of the trial. The summing up of the learned judge, who dilated on the immorality of the prisoner and his failure to call in a clergyman (which may, perhaps, have been due to

the wish of the deceased herself), and other inflammatory topics, were strongly criticised.

Forty minutes' discussion and consideration of complicated chemical and medical evidence by men who probably did not know the difference between a chlorate and a chloride seemed small measure of attention to give to the really vital issue which the jury ought to have decided before it condemned a fellow-man to the gallows.

For the question was not whether Smethurst was the undesirable sort of greedy rogue who might be expected to murder a woman living in adultery with him, but the more difficult scientific problem of whether the deceased woman died of poison or of dysentery.

The official world was hard to move. Sir George Lewis, a well-known financial expert, was a newcomer at the Home Office. Cold-blooded as a fish and totally devoid of sensibility, he was not the man to be upset by popular clamour.

But the world is seriously and deeply moved. Doctors, lawyers and citizens pour out their arguments in the columns of the Press. Unknown to the occupant of the cell in Surrey Jail, watching the hands of the clock tick off minute by minute the hours of his life, hundreds of anxious fellow-citizens are in their strange, mysterious way, by means of huge rolls of paper, movable type, whirling cylinders, and ink of a suitable consistency, forming that solid slab of overpowering force called public opinion, which impresses or destroys the densest fabric of bureaucracy.

I have a letter, dated from Rochdale, September 2nd, written to my father by John Bright. "I wrote an urgent letter," he says, "to Sir George Lewis on Sunday last in favour of Doctor Smethurst,

and I do not see how I can do more. Mr. Cobden is now at my house, and he is writing."

The Lord Chancellor, who is "not a man of mercy," he tells us, is in favour of the verdict; the Attorney-General is "wholly dissatisfied," and John Bright thinks if Lewis hangs Smethurst he will go far to ruin himself, since "I can hear of no person in this district who thinks the sentence should be carried into execution."

It was an age in which Lancashire opinion held great sway. Moreover, it was the pre-bureaucratic era, when officials deemed themselves servants of the nation, who had to justify their actions before their masters.

Whatever might be the truth of the matter, the popular instinct was sound on their view that Smethurst's guilt had not been proved. At the last moment, three days before the date of the execution, Smethurst was reprieved.

Later on, acting on the opinion of Sir Benjamin Brodie, the Home Office advised that a free pardon should be granted. Smethurst was afterwards sentenced to a year's imprisonment for bigamy. Then, with thick-skinned persistency, he returned to the courts and propounded Miss Bankes' will before a jury, who found in his favour on issues of fraud and undue influence.

A thoroughly unpleasant creature no doubt; but was he a criminal? Was any crime committed? It remains a mystery.

## 5. A BABY WITHOUT A NAME

One of the most curious stories of human wickedness and deceit that ever came before a court was investigated in what was known as the Wicklow Peerage Case by the Committee of Privileges of the

House of Lords in 1869. The one bright spot in an otherwise painful story is the extreme patience and care with which the Lords heard every possible piece of testimony and weighed and considered every argument put forward for the unconscious infant who had been treated in such a callous and extraordinary manner by his mother and friends.

The way the case arose was after this fashion. Charles Francis Arnold Howard, claiming to be the rightful Earl of Wicklow, presented a Petition to their Lordships' House praying that his right to vote for the election of Irish representative peers might be admitted.

He was the fourth son of the Rev. Francis Howard, deceased, who was next brother to the late Earl of Wicklow. His three elder brothers were dead, two of them admittedly without issue. There was no controversy at all about his degree of relationship to the late Earl, and his right to succeed was apparent, but it had been bruited about that his elder brother, William George Howard, who had died on October 19th, 1864, had left a legitimate son, born before his death, and, if this was true, this child would be the rightful heir.

When the Petition came before the Lords' Committee, on Monday, June 21st, 1869, Sir Roundell Palmer informed them that another Petition had been put forward by the mother of a nameless child whom she claimed to be the son of William George Howard. It was not contested that this lady, Mrs. Ellen Howard, *née* Richardson, was the lawful wedded wife of William George Howard, but it was denied that the infant now produced was his son or that Mrs. Ellen Howard had ever had a child.

When the evidence commenced it appeared that

this child had no counsel, and a man named Finley de Bordenave claimed, as a friend of Mrs. Howard, to address the Court and cross-examine witnesses on her behalf. This was not permitted, more especially as it appeared that he might be called by either party as a witness of fact.

The case was adjourned for counsel to be instructed, and at a later stage Serjeant Ballantine appeared for the infant, with Mr. Charles Clark. At a still later date the Solicitor-General took up the Serjeant's brief, and there is no doubt that, aided by the great forbearance and consideration of the judges and the strenuous work of counsel, everything was done for the child's interest in the long investigation that took place.

The short case put forward for the infant was that he was born in wedlock, at 27 Bruton Street, Eaton Square, on 16th May, 1864. His father at that time was away in Ireland hiding from his creditors, and had ordered his mother not to let his relations know about the birth of the child. The story of William George Howard and his marriage is not a very happy one.

There is no doubt that the husband was a man of intemperate habits and had involved himself in serious pecuniary difficulties. He had been bankrupt before his marriage. Ellen Richardson, the stepdaughter of a Gloucestershire clergyman named Butterfield, was introduced to Howard by De Bordenave. This man seems to have been a foreigner of some means, and had carried on an intrigue with Ellen's sister, Jane. The marriage took place in February, 1863, at Old Kensington Church.

After the marriage the couple reside in London at the Burlington Hotel for some five or six weeks.

A Dr. Fuller is brought by De Bordenave to attend Mrs. Howard, and at this early period he is told that if a confinement should take place he would be called in as medical attendant. Mr. and Mrs. Howard then go to Ireland, but return to London in May, and are at the Buckingham Palace Hotel for a few days. In June, 1863, they go together to 27 Bruton Street, a house owned by a Mr. Bloor.

This is a small house. De Bordenave resides on the ground floor, the Howards had the first floor, and Mr. and Mrs. Bloor and Rosa Day, Mrs. Bloor's sister, the upper rooms. A girl, Louisa Jones, came in to scrub the steps, but there was no other servant. They only stay here for a month, and then husband, wife and De Bordenave go together to Ireland, where they remain until October, 1863, when there is a quarrel between them. The husband brings his wife over to Holyhead and there leaves her with De Bordenave. The two go to Chester together, and then she goes to Longney, in Gloucestershire, to her mother and stepfather. In November she is back in London. There was no room for her at Bruton Street, so De Bordenave introduces her to a Mrs. Dennis. At this time she must be expecting a child, yet we find her going to a governesses' institution and entering her name as "Miss Ellen Howard, Longney, Gloucester, age 23, daughter of a clergyman," as a person desiring a post as governess. It seems extraordinary that any young woman in her condition should at this and subsequent dates be applying for a position as a governess, describing herself as unmarried.

In December she returns to Longney, but in January she and her mother and sister, Jane Richardson, come to town and take lodgings at 32 Bruton Street, from January 1st to February 2nd. Mr.



Howard is in England for ten days early in January and, it is said, meets his wife in De Bordenave's room at No. 27 on several occasions. The reason the visits are made in this way is because Mr. Howard is in fear of being arrested for debt.

Mrs. Howard had complained that even at this period her husband's relations were putting detectives on her track, and that the discovery of this ultimately caused her such worry and anxiety that it brought about the premature birth of her child. The Earl, however, was able to prove that, though detectives were watching her, they were employed, not by his relations, but by her own husband, who seems to have been uneasy about his wife's association with De Bordenave.

Early in February she goes to No. 27, to her old rooms, and the Bloors and De Bordenave are there as before, and now the servant, Louisa Jones, comes in for the whole day. Mrs. Howard still visits the 'governesses' institution, as if to find a situation, and her last visit seems to have been made only a month before her confinement.

Several people seem to have seen her at that time, but no one seems to have been impressed with the idea that she was likely to have a child in the near future. About the 2nd of May, Mr. Bloor made a mysterious visit to Ireland. He stated that he was asked by Mrs. Howard to carry a letter she had written to her husband. Bloor swore that he went over and saw him secretly at Newbridge Station, and Mr. Howard suggested that his wife should be attended by Dr. Wilkins. Their Lordships seem to have rejected this story altogether and very properly treated Mr. Bloor as a romancer.

However, if he did bring back such a message, no steps are taken to call in Dr. Wilkins, and no

monthly nurse is retained, but, on the 10th May, Mrs. Howard is found getting a new dress at an establishment in North Audley Street. Miss Godden, the dressmaker, who made the dress and fitted it on twice, and took the order for another dress, and made and delivered that, must have seen the lady within a few days of the alleged birth of her seven months' child, but she noticed nothing whatever nor was anything said to her about the condition of her client.

On the 16th May, Mrs. Howard makes a sudden resolve to visit Ireland, and the story is that she goes off in a cab with her luggage about seven o'clock in the evening. Feeling herself very unwell she returns to Bruton Street. Bloor is told that she has a bilious attack, and goes off to fetch Dr. Wilkins. He does not seem to have thought there was any urgency in the matter, and when he returns home Mrs. Howard's child has arrived.

As the Lord Chancellor said, in his judgment dismissing the infant's Petition, the detailed evidence of Mrs. Bloor and her sister, Rosa Day, about the birth of the child was very remarkable. He heard them in court, and thought that "their demeanour was such as to entitle their evidence to be believed if the circumstances of the case had not been so prodigiously incredible." They gave their testimony firmly and without hesitation and in a remarkably clear and distinct manner. It is certain that false evidence is often tendered in much better style and in a more convincing manner than the truth, the whole truth, and nothing but the truth, which often comes from the memory to the lips with doubting hesitancy. A reckless or lying witness has not to recall facts thoughtfully and with care, and can be more pat and ready with the phrase.

It is only by cross-examination that such evidence can be tested and appraised.

But, as the Chancellor says, the story is unbelievable, and the more you hear of it the more impossible it becomes. The little boy is said to be a sick, weakly baby, but no doctor is called in. It is not registered and it is not vaccinated, it is not baptised. Born on the 16th May, so strictly is the father's injunction to conceal the birth carried out that no one sees the child until the end of July except the Bloors and the excellent De Bordenave.

But on Saturday night, thirteen days after its birth, the mother leaves her baby boy with good Mrs. Bloor and goes down to Longney to see her mother, Mrs. Butterfield.

Even she is not taken into the secret, though she says to her daughter: "Nelly, you look as if you had been confined," to which her daughter replies: "Mamma, you must not ask me questions," and the subject drops.

Ill as the poor lady must have been, we find her jolting seven miles into Gloucester in a carrier's cart to get a letter at the post office.

And while the mother is wandering abroad, her ailing first-born, heir to an earldom, is left in the hands of the Bloors. It is indeed a mysterious baby. Louisa Jones, the servant, who came in daily, was never allowed to see it. A Mr. Lewis, a clergyman, and his wife, who were there from the 4th to the 11th of July, never saw the child. And what is even more remarkable, no one ever heard it. So that for two months we have to imagine a baby that never uttered a cry or a sound of any kind that could attract the attention of Louisa Jones or the lodgers. Mr. Fuller, the doctor, was in and out of the house attending Mr. Bloor and

Rosa Day. He, too, never saw the child until the end of July or the beginning of August.

The first outside person who sees the child is Mr. Nassau Clark, a Cambridge student and friend of William George Howard. He calls at Bruton Street at the end of July and sees Mrs. Howard nursing a child. He is, he says, "not much judge of babies," but he thinks that the baby looked about a couple of months old.

He was introduced to the infant by De Bordenave, with whom he was very friendly, and appeared to have often visited Mrs. Howard and De Bordenave, who were living at the same house during the hearing of the Petition.

The man, De Bordenave, who, as the Lord Chancellor rightly said, "appears to have been the organ of mischief in everything that concerns Mrs. Howard and her family," never gave any evidence in the case. He was living at the time with Mrs. Howard, and buzzing in and out of the court during the long hearing, but, when they sought to put him into the box, it was found that he had softly and suddenly vanished away.

The inquiry had apparently come to an end in August, 1869, but on March 1st, 1870, an unexpected position arose. Sir Roundell Palmer said he would prove where the baby came from. The story revealed a practice of baby traffic scarcely credible in modern times.

The evidence was that Mrs. Howard had, on August 22nd, 1864, gone to the Liverpool Workhouse and had there selected and afterwards taken away a male child of a pauper named Mary Best. The woman was called, and so were two nurses of the lying-in ward. It appeared to be a common practice for anyone to go to the workhouse and

choose a baby and take it away if its mother did not want it, just as you may go to a dogs' home and purchase a pet there. All the witnesses swore to Mrs. Howard coming on the 22nd and stating her requirements, which were a "male child with fair hair and blue eyes." Mary Best reluctantly gave up her baby, and the nurses carried it off to Mrs. Howard on August 24th.

Of course, if this was true, then the mystery was solved, but Mrs. Best appeared to have left the workhouse a few days afterwards with a child of her own which afterwards died. Her account was that she was fretting over the loss of her own baby, which Mrs. Howard had taken away from her, and someone considerably gave her another to keep and take home.

Mrs. Howard refused to be examined on this subject, and there seems to have been a good deal of evidence that she could not have been at Liverpool in August, and the mysterious purchase of a baby at Liverpool was considered by their Lordships as not proven against Mrs. Howard.

The Petition was dismissed by the unanimous decision of their Lordships. The infant, let us hope, never recognised the part it had been made to play in this drama of fraud and falsehood, but if it could have understood what transpired, however disappointed it might have been with the result, it would, I am sure, have gratefully acknowledged the learning and patience and care with which its rights had been investigated.

## CHAPTER ELEVEN

### CONCERNING SUPERNATURAL PLAYS

1. DUNCAN TERIG.    2. THE BURY MURDER.
3. ANNE TURNER

THAT incorrigible joker, Samuel Foote, had the temerity to make a farce about ghosts, though all sound playwrights know that your ghost only walks in tragedy, where he has special uses in warning heroes and heroines of former crimes or future woes. Foote went so far as to indict Fanny the Phantom for that contrary to the King's peace she did annoy, assault, etc., divers persons residing in Cock Lane. There is some coarse fun about her plea to be tried by a jury of ghosts, the difficulty of ghosts taking a corporal oath, and what will happen at the end of the trial if Fanny's condition requires a jury of ghostly matrons.

Philosophers tell us that the whole spirit—and witch—world meant something quite different to our forefathers from what it means to us. But I take leave to doubt it, and can see no great difference between Saul visiting the Witch of Endor and my neighbour Jones who affects the latest lady medium of Mayfair. The cult of the Bogey Man has always attracted the children of this world, and it is a very pleasant plaything if it is not insisted upon too earnestly and is treated in a nursery spirit of make-believe.



Shakespeare made excellent use of his ghosts, witches, and magic, and fairies, so that some have gone so far as to think he may have believed in the existence of such things. Not that it matters much what a playwright believes as long as he makes an attractive play of the material he uses.

Whatever your belief may be about bogeys in general, you must admit, if you read the records of the courts, that they are uncommonly shy of appearing to answer to subpœnas or other legal invitations. Daniel Dunglas Home, still regarded as a prophet by the faithful, could not get a single spirit to make an affidavit for him in his Chancery suit, whereby he lost £60,000. Not a rap would they utter for him, and he lost a fortune by their neglect, yet these tricky familiars of his would come at his call at any time to a darkened drawing-room to play concertinas or tilt tables. They are unworldly fellows, these spirits.

The few occasions on which the supernatural has played a part or exercised an influence in legal dramas are the more worthy of recollection because of their scarcity. Duncan Terig is as sound a ghost story as most, and poor Mrs. Turner's tragedy is saturated with witchcraft and magic. How far the story of the Bury murder is more than the working of natural human instinct one cannot say, but at all events it is a true story.

## I. DUNCAN TERIG

The most extraordinary story that is recorded of ghostly intervention in the interests of justice comes very properly from the Highlands, where second sight, witchcraft and magic have continued to flourish long after they have subsided from low-lying lands. Sergeant Arthur Davis was quartered

with a small military party in a wild part of the Highlands near the country of the Farquharsons. Sir Walter Scott, who edited the record of the trial of Duncan Terig, tells us that a more waste tract of mountains and bog, rocks and ravines, extending from Dubrack to Glenclunie, without habitation of any kind until you reach Glenclunie, is scarce to be met with in Scotland.

It was after '45. Culloden was a four years' memory. The horrible cruelties of Cumberland, the destruction of castles, cottages, cattle and grain, the aftermath of the rebellion, were fresh in the memories of the people. But the rebels were crushed, and there remained for the English soldiery only a few odd jobs to be done under the Act relating to disarmament and the prohibition of the Highland dress. Sergeant Davis and his men were there to police a wide district. Their duties were to disarm the Highlanders and prevent them wearing their national dress, and as Davis was an active energetic fellow it is not unlikely that he made enemies among the natives. At the same time there were traits in the character of the sergeant that made him respected if not beloved by the people of the country. He was a keen sportsman and used to go a-shooting or fishing every day. Moreover, he was a fearless man, and when he went along with a patrol party would send his men home whilst he stayed up in the hills alone and followed his sport. To his credit, too, he was known as a good manager and a sober man. He had saved money, some fifteen guineas and a half, and these he banked in a green silk purse with his loose silver which he always carried with him for safety.

He had other property of value besides the gold. There was a stout silver watch in his pocket and two

gold rings on his finger, one of which Jean Ghent, his wife, had presented to him, a plain gold ring, with the letters D.H. on the inside, and the posy : "When this you see remember me." The letters D.H. referred to Daniel Holland, Jean's first husband, but the jolly sergeant, when he took the widow to himself, had no false modesty about sporting the late Daniel's finery. For he not only went abroad with his ring, but also wore a pair of silver buckles, marked D.H., and a double-breasted vest made of striped lutestring, with two dozen silver buttons on it, that had once graced the figure of Jean's first husband. All this wealth must have dazzled the eyes of the poor Highlanders, and the sergeant seems to have loved to display his glories to the admiring neighbourhood, and, being a cheery swaggering jovial sort of fellow, would take out his silk purse of gold and jangle it in the babies' faces to amuse the little ones and bemuse their parents. Duncan Terig was a friend and neighbour of his, and knew all about the sergeant and his belongings, but so did all the countryside for that matter.

It should perhaps be added in justice to the sergeant's memory that he and Jean who had been married less than a twelvemonth were notably a happy pair, and that he was under no temptation to desert, since he was esteemed and beloved by his officers, was regarded as a civil and obliging fellow by his comrades, and was waiting advancement to the rank of sergeant-major at the next vacancy.

This was the condition of things on the morning of Monday, September 28th, 1749, when Sergeant Davis and his four men set out from Dubrack to march over the hills to meet the next patrol from Glenshye. At the place of meeting the corporal from Glenshye arrived to time. The two did their

business, and about four in the afternoon the sergeant's men returned to Mrs. Davis and informed her that they had left the sergeant shooting on the hills. It appears that the corporal had warned him of the danger of going about alone, but to no purpose. The gallant sergeant told him to mind his own business, and that as long as he had arms and ammunition he feared no one.

That night the sergeant did not return home. Poor Jean was anxious and distressed. He had never before remained away overnight. The next morning her anxiety increased. Search parties went out. She herself persuaded his particular friend, Duncan Terig, to set out and look for him. He was a man who knew the country well. It was all to no purpose, Sergeant Davis had disappeared—vanished off the face of the earth. Jean Ghent was left a widow, and yet no widow. The tongues of malice whispered that, as no body had ever been found, it was more than possible he had deserted, but Jean knew better. A Highland rumour was that he had been murdered by his own men, but no one believed that. Jean herself knew that his men were fond of him, and she was absolutely certain of his own faith and honesty. She had no doubt in her own mind that he had been murdered by some of the wild men that still hid in the fastnesses of the mountains. This indeed was the prevalent belief in the neighbourhood, and maybe friend Duncan Terig encouraged the widow in the belief.

The search for the sergeant's body continued from day to day without success, and at length the poor widow was persuaded to return to the garrison at Braemar. The ten days' wonder became a memory and then was forgotten. Nor indeed is there any reason to suppose the veil of the mystery would ever

have been lifted had it not been for the extraordinary adventure of Alexander M'Pherson of Inverey.

Alexander was a single man of twenty-six, and there seems no evidence that he himself had any guilty knowledge of the sergeant's death, nor is there any suggestion made that he had any grudge against the men who were afterwards accused and tried for the murder of Sergeant Davis. His story was simply and graphically told in the witness-box, and either he was under some strange illusion or it seems reasonably proved that the ghost of Arthur Davis appeared to him and charged his murderers with the crime.

M'Pherson, in his evidence, said that in June, 1750, when he was in bed, a vision appeared to him as of a man clad in blue—the sergeant always wore a blue surtout—who told him: "I am Sergeant Davis." Alexander rose from his bed and followed the ghost to the door, and there he repeated that he was Sergeant Davis, who had been murdered on the hill of Christy about a year before, and he desired that M'Pherson would go to Donald Farquharson and take his assistance to the burying of him.

M'Pherson did not do anything upon this first visitation, and on a second occasion "the vision again appeared naked and minded him to bury the body." On the first occasion the vision had refused to say who murdered him, but on the second appearance he charged his friends, Duncan Terig and Alexander Macdonald, with the crime.

Isobel M'Hardie of Inverey also gave evidence of the apparition. M'Pherson was in her service at the time. She was lying at one end of the shealing and he at the other the second night the ghost appeared. She saw something naked come in at the door "in a bowing posture," which frightened

her so much that she drew the clothes over her head, so that unfortunately she never heard its conversation. Still she swore to the appearance. Donald Farquharson testified that Alexander came to him with the ghost story and was in great distress about it and asked his advice. M'Pherson said he had found the bones of the sergeant on the hill-side of Christy, and asked Farquharson to go with him and bury them, and this the deponent did.

There on the peat moors between Glenchristy and Glenconie, half a mile from the patrol road, lay the remains of the unfortunate sergeant. The flesh was mostly consumed from the bones, the head separated from the body, and the mouse-coloured hair was lying by itself apart from the head. Underneath the skeleton were a few tattered rags of blue cloth, and a pair of brogues were found with the buckles cut away, and no trace, of course, of gold rings or silver buttons.

It was not until four years afterwards that Duncan Terig and Alexander Bain Macdonald were brought to trial. There was a great deal of very damning evidence against them. A man named Angus Cameron appeared and said he was on the side of the hill of Galcharn on the 28th September and saw Duncan Terig and a man he did not know strike at a man in blue, who clapped his hand on the place struck and turned and went away, and he saw Duncan and the other man follow him up, each with a gun, and they fired at him and he fell. If this was true it was conclusive as to Duncan Terig, and there was other evidence of Duncan having been seen with the sergeant's property, and moreover his wife had been seen wearing two gold rings like the sergeant's.

The prisoners were very ably defended by Mr.



Robert M'Intosh, a well-known Scots advocate, from whom Sir Walter Scott had the whole story. M'Pherson, who had been a servant of Duncan Terig, gave a great deal of evidence against him as to his possession of the sergeant's valuables, and these were identified by marks and description. If this witness were disbelieved it was obvious that the case to go to the jury would be greatly weakened. M'Intosh got from Alexander M'Pherson an admission that the conversation between himself and the vision was in the Irish language. "Pretty well," scoffed Mr. M'Intosh, "for the ghost of an English sergeant." The ridicule with which the able counsel enveloped the ghost story clouded the whole of M'Pherson's evidence and dimmed with vague suspicion the testimony of all the witnesses.

The Edinburgh tradesmen could swallow the ghost, but they could not stomach his talking Gaelic, a ridiculous scruple, since there is nothing more unreasonable in a ghost speaking a language he did not understand in the body than in his appearing at all.

The ghost was a good ghost, but, alas, he received little consideration or encouragement from the legal authorities. If, indeed and in truth, it was the poor ghost of Sergeant Arthur Davies, yearning for revenge upon his earthly enemies, he had better have kept off the boards. For his intervention through the medium of Alexander M'Pherson was the chief cause of the acquittal of the men he charged with the crime, and against one of them, Duncan Terig, there seemed a lot of black and convincing mundane testimony.

The affair remained a mystery. Locally it must have been well known by whom the murder was committed, but the truth was never brought to

light. The jurists of Edinburgh favoured the view that M'Pherson had invented the ghost, whose commands he must of course obey, to spare himself the obloquy that would attach to a man who bore true witness against his neighbour. But for my part I take no sides in the matter, I remain agnostic about the business. Alexander M'Pherson gave his evidence "purged of malice and partial council," like an honest Scot, and as he solemnly swears that he saw the sergeant's ghost on two occasions, and conversed with it in Irish, there seems no reason why anyone should not believe him if they think right.

## 2. THE BURY MURDER

Novelists and writers of romance are often taunted by men of affairs with stretching unduly what is called the long arm of coincidence. But in real life things happen which no novelist dare invent, and to many reasonable men it seems as if the long arm of coincidence may be visibly seen supporting the hand of Providence. We cannot interpret the working of these things any more than we can really comprehend the deep-sown space of the stars, but we can map out and report what we have seen and leave the interpretation to wise philosophers.

An actual instance of these mysterious happenings was unfolded before my own eyes, many years ago, in the prosaic round hand of a heavy manuscript Treasury brief. The indorsement upon it was "*Regina v. Dukes*, with you Mr. Blair," and on it was indorsed a fee worthy of the occasion, since we were to prosecute Mr. Dukes for murder.

Now the really stupendous facts of the capture of Dukes were but lightly touched upon in the solicitor's

history of the case, the reason being perhaps that the story was in no way flattering to the intelligence of the police. Nor was it necessary to the prosecution to emphasise what had happened. Indeed, I am not clear that I was at the time wholly aware of the strange nature of the events that led up to Dukes' arrest. It was enough for me that he was in the dock and the evidence was sufficient to convict him. It seemed certain, however, from the witnesses' story, that if the murder had been committed at any other period of the year but the end of September it might have remained a mystery to this day.

To understand this it is necessary to know that, among the Jews, Rosh-ha-Shanah, the first of the month of Tishri, or New Year's Day, is a most solemn anniversary. On this day all the inhabitants of the world pass before the Creator, the books of account are opened, and the fate of each and all is recorded. Naturally and rightly, therefore, on that day every Jew is found in his place at the synagogue. The New Year's Eve is kept as a social family feast. The tables are spread with grapes and other fruits and honey, and after the benediction the bread is dipped in the honey and a prayer is offered to renew for each and all of the family a good and sweet New Year. At this feast all the members of the family attend unless they are hindered by some urgent business, but on New Year's Day no calls of business will keep a man from his place in the synagogue. In 1891 Rosh-ha-Shanah, or New Year's Day, fell on Wednesday, September 25th.

Dukes was the manager of a small furniture shop in Central Street, which is one of the main streets of Bury. It was a mean little shop, about a hundred yards from the Bolton Street Station, consisting of two stories and a cellar. This shop belonged to the

Gordon Furnishing Company, which owned a series of furniture shops in Manchester and the neighbourhood. The central shop was in Strangeways, Manchester, opposite the Law Courts. The whole business belonged to an elderly Jewish trader named Gordon, and he was assisted in the management by his two sons, Meyer and George.

George Gordon used to visit the Bury shop every Tuesday, but for about a month before Tuesday, September 24th, he had not made his usual visits. Letters and telegrams had arrived from Dukes about business affairs asking him to postpone his coming as Dukes was called away. On this Tuesday, however, he makes up his mind that he will go to Bury, and he sets off the first thing in the morning. When he arrives at Bury, Dukes is not there. He examines the books, has some talk with the shop boy, and waits about for Dukes, who does not appear. He then returns to Manchester. He finds that Dukes had called in at the Strangeways shop and returned to Bury with a message from the elder Gordon. He seems to have told the old man that he had been in Manchester on business, and hurried away to try and meet George Gordon at Bury. When George Gordon hears of this visit he returns to Bury, and arrives at the shop about half-past two in the afternoon. He finds Dukes there. Dukes sends the shop boy off with a handcart to deliver some furniture, and the two are left together in the little shop.

The boy hears them talking as he leaves the shop. He goes on his errand, discovers that the address Dukes has given him is that of an empty house, and when he returns George Gordon has gone away. The boy was the last person who saw him alive. That evening a telegram comes from George to his

father to say that he had gone to Liverpool and would not be back that night. The Gordons had business interests in Liverpool, but the old man is puzzled. Was not this New Year's Eve, and the feast spread on the table? Why should his son George go away to Liverpool on New Year's Eve? The old man brooded over the affair in sorrow and refused to be comforted.

Wednesday, the 25th September, the New Year's Day, saw the whole family at the synagogue except the missing George. The old father was more miserable than ever and full of foreboding. Even Meyer, the elder son, was very anxious. Word was sent to the Manchester police that George Gordon was missing, and they put themselves into communication with the Bury authorities. A sergeant was sent down to interview Dukes, and came back fully satisfied that all was well. From a police point of view the disappearance of George Gordon presented no difficulty at all, nor need we wonder at it. So many young people are reported to them as missing, and then turn up after a day or two somewhat ashamed of themselves, that a sane police officer does not hurry to melodramatic conclusions.

Here was a young fellow who had collected his father's money, had sent a wire to say he was going on business to Liverpool, and was probably now enjoying himself at Blackpool or Southport or even the Isle of Man. The case was no new one to them. Indeed, it was as old as the Prodigal Son. The flaw in their reasoning was that they knew nothing about Rosh-ha-Shanah. Bury reported the facts to Manchester with a tolerant chuckle, and Manchester gravely told the Gordons that there was nothing suspicious in the matter, and no doubt young Gordon would turn up at the week-end.

But his father was not to be comforted. He knew in his own mind that his son George, if he were alive, would not stay away from his family and his synagogue on the great day. He shook his head sadly at the police message and said to his children: "We will wait until nightfall. If George is alive he will be with us, and if he be not here then we shall know he is dead."

The next morning came and brought no news of George. The old man and Meyer, his son, went to the Manchester police, who referred them to Bury. At Bury they insisted that George was dead, and the father expressed his belief that his body was in the shop in Central Street. He seemed from the first to have been convinced that he had been murdered and that his body remained in the shop. This was the more perverse of him inasmuch as the sergeant told him that he had made a thorough search of the house from top to bottom and found nothing suspicious there.

However, to placate the old gentleman in his distress, and perhaps a little impressed by his persistence, Sergeant Ross and two constables, with old Gordon and Meyer, went down the street to the shop. When they arrived a cart was standing at the door, which Dukes informed them he had hired to take a wardrobe to Rochdale. A thorough search of the house was now made again, and the sergeant discovered that a flag in the cellar had been recently tampered with. When the sergeant went down to the cellar Dukes attempted an exit by the side entry, but was brought back by the officer who had been stationed outside to see that no one left or entered the shop whilst they were making their investigations.

Sergeant Ross now, for the first time, began to take a serious interest in the case. Leaving Dukes



with the second constable, he ransacked the house with the Gordons from top to bottom, but not a clue of any kind was to be found. They returned to the shop and all stood round the wardrobe which was lying on the floor waiting to be loaded into the cart. It looked as though the business of the police was over.

"What is this wardrobe lying here for?" asked old Gordon.

"It's going out to Rochdale; the cart is waiting outside for it now," replied Dukes.

"Open it!" demanded the old man.

"I cannot. A lady bought it. She packed some things in it, and locked it and took the key."

"Then burst it open! It's mine! Burst it open!"

The old man was in a frenzy. There seemed no doubt in anyone's mind what he expected to see. A police officer prised open the door. It flew readily upward, disclosing its horrid huddled contents. Meyer flew at Dukes' throat crying: "You have murdered my brother!" The police pulled him away and saved Dukes for the law.

Thus did the hand of Providence guide the father to the corpse of his son.

The reconstruction of the crime was easy enough. Dukes had killed his victim the moment the shop boy had left them together on Tuesday afternoon, and put the body in the wardrobe. His accounts were wrong, and George Gordon had probably discovered this. The next day he bought a pick and had made an attempt to dig a grave in the cellar, but found cement under the flags. He then went out and hired a cart for Thursday morning. He apparently intended to throw the body out behind some stone wall or dispose of it in some

lonely spot. Then he could have burned the wardrobe or cleaned it up and put it into stock again. If it had not been that he killed George Gordon on New Year's Eve, and that his father, aghast at his non-appearance at Rosh-ha-Shanah, instinctively recognised that a crime had been committed, there seems no doubt that the body of George Gordon would not have been discovered for some length of time, and it would have been a matter of grave difficulty to prove that Dukes was the murderer.

As it was, the story was pieced together without difficulty. Dukes set up a defence that he had been attacked by young Gordon and had killed him in self-defence. Even Cottingham's eloquence could not persuade the jury to consider it seriously.

Dukes killed his victim on New Year's Eve, and he himself was hanged in Strangeways Jail on Christmas Eve.

Was it all the long arm of coincidence or the hand of Providence?

### 3. ANNE TURNER

I confess that I have a feeling of pity for Sweet Anne Turner. She joined the company as a soubrette, or, as the old managers used to say, a "singing chambermaid." A dainty, delicate, small-part lady playing up to her beautiful mistress, the Countess of Essex, with touching devotion. Having her own little love affairs, too, in the wanton Court of James I, and poets to proclaim her cherry lips, the golden threads that aureoled her brow and

"that breast of more than lily white

Which sometimes was the lodge of sweet delight."

She must have known, you will say, that her mistress was the worst woman in Europe. One

can scarcely acquit her of being a minor actor in a foul conspiracy, possibly an accessory before the fact to murder, or at least the intent to murder, though the poor wretch never confessed to it.

Perhaps her worst offence, in the eyes of a censorious world, was that her nimble brain and clever fingers invented that fantastic ruff with yellow starch which the countess made so fashionable.

At her fall it became the badge of foul lust and disgrace, and they say old Coke decreed that poor Anne should wear her yellow ruff on the gallows, which, indeed, she did, and the fashion of yellow starch died with her.

For, though only an understudy, she was called upon at the end of the fifth act to play the leading lady's part. The countess, her dear mistress, deserted her, pleaded guilty, and threw herself, not without guarantee, I think, on the mercy of King James, receiving a royal pardon. Poor tender Anne was left to go on alone in the Tyburn scene, literally left in the cart in which she makes her entrance, stumbles over a dying speech of her own words, and expiates her sins.

I do not want to scare beginners, but there is a lot of risk about being an understudy. This is more true about crime than any of the lesser arts, since, as Richard Weston said, who played the first murderer in this drama of ours: "The law makes a net to catch the little birds and let the great ones go."

The Overbury murder, if it was a murder, is one of the big mysteries in legal history. Frances Howard, that sweet, bewitching Moabitish woman, daughter of the Earl of Suffolk, is married in 1606, at the age of thirteen, to the Earl of Essex, the young son of Elizabeth's unhappy friend. Later on,

Frances, but yet a girl, falls in love with the beautiful Robert Carr, King's favourite and soon to be Earl of Somerset. Essex carries the poor woman off to his country house at Chartley, where she shuts herself in her chamber and refuses to be visited.

But she had left in London her dear friend, Anne Turner, the young widow of a physician, a wise woman in touch with Dr. Forman, the astrologer of Lambeth, and other curious figures of London's underworld. We see Anne on dark nights taking a wherry across the river, stealing secretly to Forman's house, closeted with him for hours in his laboratory, to the discontent of Mrs. Forman, who has her revenge on poor Anne from the witness-box later on.

It was Anne's part to obtain love philtres and drugs. The former to keep the Earl of Somerset faithful and ardent, the latter to weaken and debilitate the lady's husband. Conjuraton by obscene wax figures and other strange incantations were practised by the grave Forman for adequate reward.

At length James I, Defender of the Faith, affectionately slobbering over his pale, unhappy favourite, the Earl of Somerset, asks him what boon or gift will bring back happiness to him and cure his melancholy. He wishes to marry Frances. She is pining for him. She is ready to assert that the Earl of Essex is incapable as a husband. She claims a divorce on that ground.

The pedant King is delighted with the idea. He calls together lawyers and bishops and doctors, and enters into theological, physiological and prurient details with much zest and learning. A jury of matrons is called in. Frances persuades a young

companion, heavily veiled, to personate her, and the examination is passed with honours.

Grave, reverend and pious bishops, with their worldly thoughts perhaps fixed on archbishoprics, listen to the scholarly discourses of the King, and, bowing to the wishes of the Defender of their Faith, pronounce a nullity and divorce.

The marriage of the lady and her glorious paramour takes place on the day after Christmas Day, 1613, amidst splendid rejoicing, the beautiful shameless girl standing before the altar with her hair down, the symbol of her virginity, sweet Anne Turner, in her yellow ruff, smiling at their triumph.

But throughout all these negotiations and conspiracies, which lasted for two years, one friend of Robert Carr's warned him against this woman and prophesied his ruin. Sir Thomas Overbury, a gentleman of the Court and a writer of no mean repute, had expressed too openly his opinion of this proposed divorce and the measure by which it was promoted.

The King is offended with him. He is thrown into the Tower. Through Somerset's influence a new lieutenant is placed in command. Weston, a creature of Somerset's, attends him. The countess sends him tarts and jellies flavoured with arsenic and other sibber spices obtained from the excellent Forman.

Overbury and his relations appeal to the King in vain. Double-faced Somerset sympathises. The charming countess sends more confections. Had Forman really given her arsenic? Did Overbury eat these things? We shall never know. The King sends Sir Theodore Mayerne, his foreign physician, to see him. A foreign apothecary doses him. They were the last to be with him. Did

they do him good or harm? Their evidence is, curiously enough, never obtained by Sir Edward Coke when he holds his Great Oyer of Poisoning.

Whatever be the truth, poor Overbury is now reduced by poison or disease or decay to a wretched condition. He dies on Wednesday, September 15th, 1613, and is hustled into his grave in the choir of the church in the Tower by three o'clock of the same afternoon. His secrets, whatever they were, are buried with him. His Majesty expresses no contrition or discontent. Somerset is well satisfied, and Frances and Sweet Anne Turner kiss each other with smiles of victory.

For two years the guilty couple lived a riotous life of extravagance and feasting and tinsel glory. Masques were made in their honour, gifts were showered upon them, and the King gloried in the shameful pleasures of his dear ones. Sweet Anne Turner, happy with her own love affairs and love children, is meanwhile living a dainty life, flitting round her beautiful popular mistress and basking with her yellow starch butterfly ruffs in the sunshine of prosperity.

There is an old wives' saying that murder will out, and a popular belief, worth maintaining, perhaps, that truth will prevail.

Certainly the strange story of the Overbury murder, if, as I have said, it was a murder, goes far to sanction these simple beliefs. Yet one could have wished that the investigation had been conducted with greater courage and honesty of purpose, and had not been hindered by the desire to shield the great ones of the earth.

I have often wondered whether the gossip and whispers about Overbury's fate would ever have been uttered aloud but for the fact that James tired



of his favourite, and had made up his mind to depose him and install Villiers in his place.

It is at this moment that a story told by an apothecary's lad in the Low Countries gets sent over and becomes after-dinner talk and reaches the ears of the Court. Then Forman dies. He had foretold his death to a day, and the day arriving his dear wife twits him with his want of success. The doctor smiles knowingly. Later in the day he takes a pair of oars to go down the river, and in the middle of the stream he falls down in the boat and dies, whereupon, it is related, a most sad storm of wind followed.

Strange stories are told of what is found in his books. There is an entry certified by himself to be written by the devil with his own hand and, what is worse, there are ledger accounts for philtres, potions and what-not supplied to the highest in the land.

The King permits the Lord Chief Justice Coke to investigate these strange matters and to inquire, but not too closely, into the rumours concerning Overbury's death. Not a word is whispered to his favourite. Coke has the hardihood to send for him. His messenger arrives at Royston. He finds Somerset with the King sitting beside him, lolling with his arms round his neck. Somerset laughs at Coke's summons as an affront to an English peer.

"Nay, man," says our constitutional monarch. "If Coke sends for me, I must go."

The royal Judas kisses him farewell and watches him ride away to his doom.

"Now the de'il go wi' thee," says the King. "For I will see thy face no more."

It is better to trust in the Lord than to put confidences in princes.

Among the smaller fry that are swept into the net is pretty Mistress Turner. She is lodged with an alderman. The Earl of Somerset, who is not yet under arrest, sends her a present and a promise of liberty. Her dear countess sends her a diamond ring and a jewelled cross. The alderman is very kind to the pretty little woman. She herself, fearing no evil, actually petitions grim old Coke for a speedy trial. The old man is in no hurry. He has to hang Weston first and spread his net for many others. But on November 7th, 1615, she comes before him dressed in a bewitching hat that has cost her much thought.

This the old man rules out of order. "You are not in church now, madam, and must be uncovered."

She hears Sir Laurence Hyde, the Queen's Attorney, opening the case. She learns that Weston is caught and killed. She listens to the story of all her visits to Forman and sees produced his foul, indecent charms and strange draperies which have been discovered in her house. She listens to the countess's letters to her "Sweet Turner" and "Sweet Father Forman," begging them to help her to gain Carr's love by means of enchantments. She hears jealous Mrs. Forman detailing her visits to the old wizard, and notes the fear and disgust on the faces of the stolid jury as they handle the strange parchments with blasphemous signs upon them which are the chief evidence of her guilt.

She has no counsel to help her. Slowly her silly brain grasps the meaning of the drama of which she is the centre-piece. Her speedy trial is racing along its course to its appointed end. She hears the coarse voice of the judge shouting at her, in the face of the jury, that she has the seven deadly sins.

The jurymen nod their heads in unison at the

judicial description of the victim, and when she is formally called upon for her defence the poor wretch can do nothing but weep for her sins and her fate.

The butterfly is broken on the wheel. Judge and jury and public are gloriously self-satisfied that so foul a creature should have been allowed so honourable a trial. Whether it was justice or not, there was no mercy in it for poor Anne.

Next Wednesday morning, a week after her trial, the road to Tyburn is thronged with people making their way to the place of her execution. Ladies and gentlemen of fashion in coaches and on horse, and a mob of the groundlings on foot.

A sigh of pity goes up as the little woman, kneeling in the cart, is seen coming along the Oxford Road on her last journey, wearing for the last time her yellow bands. She played her part of repentant Magdalene very prettily, with many sighs and tears and proper confessions, seconded by the official prompter, the Rev. Dr. Whitinge, who was State father-confessor to these wretches and a clever producer of last-act repentances.

The mob was greatly pleased and properly edified by her pious conduct, and many tears were shed and prayers murmured for the poor soul as they pulled the black veil over her face, put the noose round her neck and drew the cart away from under the gibbet.

## CHAPTER TWELVE

CONCERNING A GREAT TRICK ARTIST  
JACK SHEPPARD

THERE is a solid catholicity about the appeal of the trick artist to the human soul in search of entertainment. To begin with, he acts in a universal language understood of all peoples. The babe and the bearded philosopher can follow his actions with equal intelligence and enjoy his efforts with similar glee.

To have memories of Blondin and Houdin is to have treasure that no one can steal from you. One can never forget, too, the performances of that great trick artist the late George Conquest, who enacted a man spider and sprang from rope to rope of the huge web stretched across the stage, flew on invisible wires and was shot into the air from dozens of traps set in the most unlikely places in the scene, so that you found your head whirling from side to side lest you should miss an entrance or an exit.

In a more modern day how truly great was Cinquevalli, a real wonder of the world as a trick artist, a man of superhuman strength with the delicate touch of a pianist, the timing and control of a fiddler, and footwork that was worthy of a boxer or a batsman at best. How pleasant to see him using a real cannon ball as his plaything. He

catches it on a plate, takes it between his heels, and throwing it behind him catches it in one hand, or lets it run as if enchanted from one outstretched hand across his chest or shoulders to the other. And when you think it cannot surely be a real cannon ball he whirls it at lightning pace round and round his head, and you feel certain it is some rubber toy he is playing with, until he slows his movements and with a graceful bow drops the cannon ball on to the boards with a convincing thud that reproves your momentary disbelief. If there was ever in my day greater juggling than his I did not see it, nor would I readily own to it if I did see it, for there was a charm of manner and modesty of achievement about this great artist that left his audiences friends and followers for life.

And it is the same with me about Jack Sheppard. There is a fascination about him and his career that I cannot account for. The rascal seems to have "given me medicines to make me love him." I often wonder if the name of Jack Sheppard exercises the same spell over the schoolboy of to-day that it did in the 'sixties. Every small boy read Harrison Ainsworth's great romance of my day. Chiefly, no doubt, because it was forbidden. If the schoolmaster had the sense to put the works of Euclid on his *index expurgatorius* every adventurous schoolboy would wrestle with his cubist pictures in a glorious search after the hidden improprieties of eternal triangles. When the Bible was a forbidden book in England it was perhaps better read and respected than it is to-day.

But why, you ask, was *Jack Sheppard* forbidden? There you are up against the problem of the unfathomable density of schoolmasters. I fancy the dim pedagogues of the past that I suffered under,

if they had ever studied the history of Jack Sheppard at all, merely saw in him a young scapegrace unduly belauded for constantly outwitting the turnkey. The schoolmaster profession of the Victorian era, having more in common with jailers and executioners than with artists and builders, probably felt that Jack was a dangerous ideal to set before their own captives.

The Jack Sheppard of real life was indeed a pathetic little figure, more sinned against than sinning, a product of the barbarous social age in which he lived. But this was not the fascination of the hero in the eyes of his young admirers. It was the dramatic genius of the fellow that inspired our enthusiasm. He was the great trick artist in the Drama of the Law. Victorian boys pictured to themselves his wonderful exploits as they curled up in secret places devouring the thumbed and forbidden pages, dwelling on every word and movement of the great Jack Sheppard escaping from Newgate, and gasped in excited enthusiasm at the marvels of his exploits.

As a prison breaker Jack Sheppard was beyond doubt the greatest artist we have ever produced. Not only his achievements, but the dramatic circumstances of them, made him famous in his own day and earned him an immortal name. We have long forgotten his foolish tawdry crimes. All we remember is his perseverance, his daring, his lion-hearted courage, his success. One would have thought that a sense of sportsmanship in jail architects would have led them to petition for his reprieve, that they might have tried to build a prison cage that would contain Jack and so prove their superiority.

But bureaucracy is the enemy of genius. Artists like Thornhill and Hogarth waited upon him to



paint his portrait, literary men like the poet Gay conversed with him in the condemned cell, and the throng that sought to visit him had to be rationed in their enthusiasm.

But to the official jailers and judges he was merely a malefactor. He annoyed them by proving that their jails and handcuffs and sentences were things of naught to a lad of his mettle. Nothing is more dangerous and undesirable in youth than to hint at the indiscretions of pastors and masters, but to prove in the eyes of the world that they are fools who do not understand their business—that is akin to blasphemy. Poor Jack did not suffer for his timid larcenies but for his brilliant exposé of the incompetence of official Newgate.

I confess that to-day I love the Sheppard of Defoe's pamphlet and the contemporary news sheets of Mr. Mist and Mr. Applebee rather than the romantic hero of Harrison Ainsworth and the penny dreadfuls. If Jonathan Wild did plot against him, which is more than doubtful, it does not add a span to the height of his genius as a prison breaker. If he loved his mother as devotedly as Ainsworth believes, I am glad to hear of it, but many quite ordinary boys love their mothers without fascinating the world at large.

Jack Sheppard does not need these legendary adornments—though in my time I have devoured them greedily. To-day I prefer the plain story of the Newgate Calendar. It has a keener and more bracing drama about it. For, to tell Jack Sheppard's story on the stage, the first acts should be written by a dour playwright of the Manchester school, and the great scenes left to the genius of Jack and the stage carpenter who built Newgate, with the excited hum of muted pantomime music

stirring the audience to haunting fears of failure and ending in exultant trumpet strains of conquest and success.

Jack's biography is but a commonplace story. Born in 1702, the son of a Spitalfields weaver, Jack was himself apprenticed as a carpenter. His father died when he was young. There was another brother, Thomas, also a thief, and ultimately transported. His apprenticeship ended, Jack took to evil ways. He worked with his two ladies, Edgeworth Bess and Poll Maggot. They stole tankards and dress pieces, and were, it must be confessed, little better than sneak thieves. Later on he did higher-class work with Blueskin, but as a thief he seems to have been a very ordinary utility man. It was not until he was within the four walls of a jail that his genius showed itself.

His first recorded escape was from St. Giles's Round House, to which he had been remanded for the night by Justice Parry. The simple magistrate never saw him again. With half a razor and a broken chair he cut through the roof of the Round House from his cell on the second floor, and tying a sheet to a blanket dropped into the churchyard below and was away.

But not for long. The jail to poor Jack was the candle calling for the moth. As if he felt that prison walls were the only medium in which, to use the modern art slang, he could express his true personality, he no sooner tumbled out of the jail than he fell into the arms of the police. His next prison was the New Prison, where he and Edgeworth Bess were detained over Whit-Sunday. This time he was fettered, but about 2 a.m. on Monday he had sawn off his handcuffs, cut off an iron bar in the window, dropped Bess out, without her gown and

petticoat, by means of the usual sheet and blanket, followed himself, scaled a 20-foot wall by the aid of a gimlet and some pincers that his friends had smuggled in to him, and so was away again with his lady, ripe for fresh adventure.

August finds him at the Old Bailey, where, with the assistance of Jonathan Wild, he is convicted and sentenced to death, and placed in the condemned cell at Newgate. On August 30th, 1724, a warrant reaches the prison for the execution next day. That evening Poll and Bess come to say farewell to him. He is allowed to come to a grating to speak to them. They are standing in a passage which is in view of the jailers who sit at the end of it at a table. Jack has already sawn off one of the barrels at the end of his links, and while he and Bess are talking, and the women, poor things, weeping under cover of the noise of it, with a saw dipped in oil he saws through one of the bars of the grating. Head first he drags his little slender body through the opening, the women lifting him down gently. Then they throw a nightgown over him and he passes out between them. They slip down to Black Friars Stairs, take a wherry to Westminster, and again Jack is free.

Here he has to leave his dear Bess, who, the next day, is apprehended by Jonathan Wild. Sheppard makes for Clare Market, and there meets a pal, by name William Page, a butcher's apprentice. He provides Jack with the blue frock and woollen apron of a butcher's apprentice, and the two ramble off to Northampton, where a relation of Page entertains them for a while.

But the call of the London streets and Newgate is too strong for him, and he is back again in the danger zone within ten days of his escape. He is heard of

at Smithfield, and does a clever little piece of house-breaking at Mr. Martin's, the watchmaker's, over against St. Bride's Church, stealing three watches, one of which he pawns. Then he goes north and is marked down by police spies as being at "the town of Finchley near Highgate in company with one William Page." Here, on September 12th, a posse surprise the pair. Page surrenders meekly. Jack takes to the hedges, but is hunted down and strikes his flag to the threat of a pistol. Mr. Martin's two other watches are still upon him.

There is great rejoicing at Newgate over his return. The wicked and suspicious world had openly suggested that Sheppard could not have escaped without official assistance. Defoe, who examined into the matter, is satisfied there is no ground for the suggestion. Newgate indeed, to a lad of Jack's genius, is but a trap to catch a sun-beam. But for the future they are taking no chances. He is lodged in the Castle, in the body of the jail, where he is chained down to two large iron staples in the floor. Many curious folk visit him, and friends try to conceal files and thin saws in Bibles and other gifts, but the jailers are not to be tricked again and he is carefully watched.

The public expected that Jack would now be turned off without delay, but that is not the way of the law. This being vacation time, the Recorder and his deputy are down at Bath taking the waters, so Jack's business has to wait a while. For all things must be done decently and in order, and the public learn, not perhaps without satisfaction, that it must be proved in a regular and judicial way that the man they have caught is the same Jack Sheppard who was ordered for execution, and this can only be done at the next October sittings.

Even though he was padlocked to the floor of the Castle, Jack was at his tricks again before long, and one morning his keepers coming in with his breakfast found him at liberty wandering round the cell. He would have been out of it, up the chimney, but for the iron bars he found in his way. They searched him head to foot, but found nothing, so contented themselves with chaining him down again, grumbling and begging him to tell them how it was done.

Jack has the soul of an artist. The dear lad has no other audience to act to but these soulless knaves. The temptation of applause, the delight in making even these groundlings gape in amazement, is too strong a lure for his actor spirit. He produces a nail from nowhere, "and with that and no other Instrument unlocked himself again before their Faces." One would have thought even the heart of a turnkey would have been touched, and decent gratitude for a free show drawn from them some act of kindness. But no! We read: "He is now again Handcuffed and more effectually chained." It was this incident that gave modern bureaucracy the first idea of the entertainment tax.

But Sheppard never bore malice against his jailers. One of them, finding that he had been tampering with his irons, screwed them up again, and by way of courteous explanation said to his prisoner: "Young man, I see what you have been doing, but the Affair betwixt us stands thus: It is your business to make your Escape if possible and mine to take care you shall not."

Sheppard answered coolly: "Then let's both mind our own business."

What a wealth of philosophy lies in his answer, the more to be admired in that it was backed by

practical action and good example. Jack knew his business and minded it. That is where he was superior to his masters.

On Thursday, October 15th, the opportunity came for Jack's great adventure. Austin, his jailer, visited him with some official guests who came for a sight of the hero, and in their presence his ironse and handcuffs were carefully examined. It was about two in the afternoon, and Austin explained that he could not visit him again until next morning, as the Sessions would be sitting until late that night, and he had to be in attendance at the Old Bailey.

Jack had found and secreted an old nail. It was his only weapon. He had already learned to use it as a key to his handcuffs. His hands free, he now by mere force broke the chains between his feet-locks and twisted a small iron link into a further useful tool. He then released his fetters from the staples in the floor. That done, he drew up his chains and fastened them to his body with his garters to prevent their shackling.

His first task was to make a hole in the chimney of the Castle, about three foot wide and six foot high from the floor, and here he finds his way barred by an iron bar cemented in the chimney walls. With the broken links of his chain he digs this out and makes a clear way for himself and gains another useful implement for his work. Through the chimney he climbs to the Red Room above his prison, where some years back the Preston rebels had been kept, but it is now in disuse.

It is seven years since the ponderous lock of the Red Room had been turned, but Sheppard with his nail goes to work at the nut of the lock and has it open in seven minutes. He is now in the passage leading to the chapel. The door at the other end



is bolted on the opposite side. A shrewd check this. The iron bar comes into play with good effect. The wall is broken away until he can get an arm through and dislodge the bolt. Thus not without noise and fear of interruption is the chapel gained.

He climbs over the spiked railings in the chapel and breaks off one of the spikes to add to his bag of tools. There is another bad door to tackle between the chapel and the tower leads. The spike comes in handy at this stage, but, the leads gained, an even more stubborn door blocks his way. It was full dark now and the work in front of him seems hopeless. For half an hour with spike and bar he works at this obstacle in grim despair. At length he wrenches the fillet from the main part of the door, carrying away the box and staples, and so over a wall and on to the upper leads.

St. Sepulchre's clock chimes eight. He sniffs the free air. Below him are the lighted shops, and he hears the hum of the City traffic. He surveys the terrain with the skill of a general and sees that the only possible descent is on to the roof of a turner's house, but that requires further equipment.

And now his courage has to be screwed up to the sticking-point. Step by step he retraces his way through the chapel and down the chimney, and gropes round in the darkness till he finds his stockings and a blanket. Having retrieved these in safety he is back once again on the upper leads, fixes his blanket with spike and stocking into Newgate wall, and drops lightly on to the leads of the turner's house.

The garret door in the leads was open, and he stole softly down two pairs of stairs, but found that the turner was having a party. As he peeped into

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